***United States Court of Appeals***

***for the Second Circuit***

# JOINT APPENDIX

ORIGINAL

# 76-7351

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P/S

# United States Court of Appeals

## For the Second Circuit

KARL M. NEIMAND, *et al.*, *Plaintiffs-Appellees,*

*and*

GEORGE COOPER, *et al.*, *Plaintiffs-Intervenors,*

*and*

GEORGE SCHWARTZ, *et al.*, *Additional Plaintiffs-Intervenors,*

*against*

MENDON PROPERTIES, INC., *et al.*, *Defendants-Appellants,*

*and*

EUGENE RODIN, *et al.*, *Defendants.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

## JOINT APPENDIX


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THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 732-6978—1976

(9732)



UNITED STATES COURT OF APPEALS
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SECOND CIRCUIT

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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
- - - - - - - - - - - - - - - - - - - - -x

KARL M. NEIMAND, et al.,

Plaintiffs-Appellees,

-and-

GEORGE COOPER, et al.,

Plaintiffs-Intervenors,

-and-

GEORGE SCHWARTZ, et al.,

Additional Plaintiffs-Intervenors,

-against-

MENDON PROPERTIES, INC., et al.,

Defendants-Appellants,

and

EUGENE RODIN, et al.,

Defendants.

- - - - - - - - - - - - - - - - - - - - -x

76-7351

DOCKET ENTRIES TO DATE

DOCKET ENTRIES

| DATE | FILINGS—PROCEEDINGS | AMOUNT REPORTED IN EMOLUMENT RETURNS | |
|---|---|---|---|
| 6-28-74 | Complaint filed. Summons issued. | 1 | JS5 |
| 7-5-74 | Pltff's demand for jury trial | 2 | |
| 8-2-74 | By NEAHER, J - Order dtd 7-30-74 extending time to answer the complaint to 8-22-74 filed. | 3 | |
| 8/7/74 | Notice of appearance (Defts.) filed | 4 | |
| 8/22/74 | By NEAHER, J. - Order dtd. 8/21/74 extending time for defts to answer to 9/6/74 filed | 5 | |
| 8 29-74 | Summons returned & filed./Executed | 6 | |
| 9-6-74 | By WEINSTEIN, J. - Order dtd 9-4-74 extending time of defts to answer complaint to 9-25-74 filed. | 7 | |
| 9-16-74 | Before NEAHER, J.- Case called. Settlement possible. Memorandum to be submitted to the Court. Case addjd to 11-18-74 at 9:30 a.m. | | |
| 9-26-74 | By NEAHER, J.--order dtd 9-25-74 extending time for defts to answer complaint to 10-11-74 filed. | 8 | |
| 10-11-74 | By NEAHER, J.-- Order to show cause dtd 10-11-74 ret 10-15-74 at 3 PM for an order to txtend time of defts to answer complaint to 10-31-74, etc. with proof of service & memorandum in support of application filed. | 9/10 | |
| 0/15/74 | Before NEAHER, J.- Case called- Motion held -Deft's time to answer the complaint has been extended to Oct. 31, 1974-Order to be submitted. | | |
| 10-18-74 | By NEAHER, J. - Order dtd 10-18-74 extending time of defts to answer complaint to 10-31-74 filed. | 11 | |
| 10/22/74 | Notice of Deposition of pltff's to take deposition of Chicago Title Insurance Co. filed | 12 | |
| 10/30/74 | By NEAHER, J.- Order dated Oct. 29, 1974 filed that the time the time for the deft to answer the complaint is extended to Nov. 15, 1974 | 13 | |
| 11-7-74 | Memorandum in support of motion to disqualify Bernard S. Kanton as atty for pltffs filed. | 14 | |
| 11-7-74 | Notice of motion returnable 11-22-74 at 10:00 Am filed. re; disqualification of B. Kanton. | 15 | |
| 11-7-74 | Memorandum in support of motion to strike class action allegations and to dismiss for failure to join indispensable parties filed. | 16 | |
| 11-7-74 | Notice of motion returnable 11-22-74 filed.re striking the class action allegations of the complaint and dismissing the complaint for failure to join indispensable parties. | 17 | |
| 11/13/74 | Request for Admissions under Rule 36 filed. | 18 | |

BEST COPY AVAILABLE

DOCKET ENTRIES

| DATE | FILINGS—PROCEEDINGS | CLERK'S FEES PLAINTIFF | CLERK'S FEES DEFENDANT | AMOUNT REPORTED IN EMOLUMENT RETURNS | |
|---|---|---|---|---|---|
| 11/14/74 | Notice of Motion purs. to Rules 56(a), 56(d) and 16(1) for summary judgment for order simplifying the issues and for partial summary judgment in connection therewith, ret. 11/14/74 filed. | | | 19 | |
| 11/14/74 | Notice of Motion, ret. Nov. 22, 1974 filed re: for class determination purs. to Rule 23. | | | 20 | |
| 11/14/74 | Pltff's Brief in Support of Class Determination and for Partial Summary Judgment filed. | | | 21 | |
| 11/14/74 | Affidavit of Service for Documents #19,20, and 21 filed. | | | 22 | |
| 11-18-74 | Notice of deposition pursuant to Rules 26, 30, and 45 on 12-12-74 at 2:00 PM of Joseph Maressa and Martin Ettore filed. | | | 23 | |
| 11/18/74 | Before NEAHER,J.- Case called- Adjd to 11/22/74 | | | | |
| 11-20-74 | Reply memorandum in support of motion to strike class action & to dismiss filed. | | | 24 | |
| 11-22-74 | Before NEAHER, J.--Case called. Deft's motion to disqualify Bernard S. Kanton as atty for pltffs & deft's motion to strike class action allegations of the complaint argued. Decision reserved on both motions. Pltffs' motion for summary judgment to be held in abeyance on the consent of all parties. | | | | |
| 12-6-74 | Notice to take deposition of Burton Bronster, et al filed. | | | 25 | |
| 12-6-74 | Notice of deposition of Bankers Trust Company filed. | | | 26 | |
| 12/11/74 | By NEAHER,J.- Order dated 12/10/74 filed that defts time to answer the pltff's Request for Admissions is extended to 12/30/74 | | | | 27 |
| 12/18/74 | Notice of Deposition of defts K. Boklan, etc. filed. | | | | 28 |
| 12/24/74 | Notice of Deposition of defts Mendon Properties , Inc, et al | | | | 29 |
| 12/24/74 | Notice of Deposition of Samuel L. Grimes ,et al filed. | | | | 30 |
| 12-27-74 | By NEAHER, J.-Stipulation of substitution dtd 12-27-74 that Messrs. Nickerson, Kramer, Lowenstein, Nessen, Kamin & Soll be substituted in place of Messrs. Rogers & Wells as attys for deft Eugene Rodin filed. | | | | 31 |
| 12-27-74 | By NEAHER, J.-Stipulation of Substitution dtd 12-27-74 that Messts. Nickerson, Kramer, Lowenstein, Nessen, Kamin & Soll be substituted in place of Messrs. Rogers & Wells as sttys for defts Rillstone Properties, INc. and Godsberg Realty Corp. filed. | | | | 32 |
| 12-30-74 | Responses of defts Seymour Vogel, Kenneth E. Boklan and Hartwick Properties, Inc. to pltffs' request for admissions filed. | | | | 33-3 |

DOCKET ENTRIES

| DATE | FILINGS—PROCEEDINGS | CLERK'S FEES: PLAINTIFF | CLERK'S FEES: DEFENDANT | AMOUNT REPORTED IN EMOLUMENT RETURNS |
|---|---|---|---|---|
| 1-10-75 | zzzzzzzzzzzzzzzzzzzmg | | | |
| 1-10-75 | By NEAHER, J.-Consent ot change attorney dated Jan. 10, 1975 filed. | | | 36 |
| 1-13-75 | Notice of motion and memorandum of law for an order staying discovery etc., ret 1-24-75 at 10 AM. filed. | | | 37/38 |
| 1/27/75 | Affidavit in Support of Motion purs. to Rule 26(c) to stay all fauther discovery procedings filed. | | | 39 |
| 1/31/75 | Affidavit in Support of Motin for a protective order filed. | | | 40 |
| 1-31-75 | Before NEAHER, J.-Case called. Motion staying discovery held. Order to be submitted etc. | | | |
| 2-7-75 | Interrogatories submitted by defts Boklan & Vogel filed. | | | 41 |
| 2/11/75 | By NEAHER, J.- Order to change attys for deft Birnbaum filed. | | | 42 |
| 2/14/75 | Notice of Deposition filed. | | | 43 |
| 2-21-75 | By NEAHER, J.--Order dtd 2-21-75 that pltffs' motion to allow the action to be maintained as a class action is denied, etc filed, (p/c mailed to attys.) | | | 44 |
| 2/24/75 | Notice of Motion, ret. 3/14/75 filed re: for an order granting pltffs leave to join as parties deft Bervo Assoc., Inc. etc. | | | 45 |
| 2/24/75 | Pltff's Amended complaint and intervenors complaint filed. | | | 46 |
| 2/24/75 | Notice of Intervention filed. | | | 47 |
| 2-26-75 | Additional summons issued. | | | |
| 2/28/75 | By NEAHER, J.- Order dated 2/28/75 filed that the interrogatories dated 2/6/75 are withdrawn without prejudice. | | | 48 |
| 3-3-75 | Answer to request to produce filed. | | | 49 |
| 3-13-75 | Unsigned copy of stip adjing motion to join additional parties deft to 4-4-75 filed. | | | 50 |
| 3-14-75 | Before NEAHER, J. - Case called. Case adj'd to 4-4-75 at 10 A.M. | | | |
| 3/18/75 | Notice of Additional intervention filed. | | | 51 |
| 3/18/75 | By NEAHER, J.- Order dated 3/17/75 filed that pltff's motion to join additional parties is adjd to 4/4/75 | | | 52 |
| 3-19-75 | Notice to take deposition of deft Kenneth E. Boklan filed. | | | 53 |
| 3-20-75 | Amended notice of additional intervention filed. | | | 54 |
| 3/27/75 | Notice of additional intervention filed. | | | 55 |
| 4-4-75 | Before NEAHER, J. - Case called for hearing on motions to intervene. Motions submitted. | | | |
| 4-4-75 | Before NEAHER, J. - Case called for hearing on motion to intervene. Motion submitted. No opposition. | | | |

CONTINUED

DOCKET ENTRIES

| DATE | FILINGS—PROCEEDINGS | MOTION REPORTED IN EMOLUMENT RETURNS |
|---|---|---|
| 4-4-75 | Before NEAHER, J.--Csse called. Pltffs' motion for granting leave to join as parties deft Bervo Assoc., etc submitted. No opposition. | --- |
| 4-7-75 | By NEAHER, J - Order dtd 4-5-75 granting motion to join Bervo Associates, Arthur Vogel, Samuel Grimes & Sylvia Rodin as party defts filed on document #45. | --- |
| 4-16-75 | Notice of additional intervention of Eugene Cohn, Mae Cohn & Margaret Cohn filed. | 56 |
| 4-24-75 | Additional summons ret and filed/executed only as to Arthur Vogel. | 57 |
| 5-9-75 | By NEAHER, J. - Order dtd 5-8-75 adding party defts, etc. filed. | 58 |
| 6-18-75 | Before NEAHER, J. - Case called & adj'd without date. | |
| 7-7-75 | By NEAHER, J. - Order dtd 7-3-75 extending time to answer amended complaint to 7-31-75 filed. | 59 |
| 8-19-75 | By NEAHER, J.-Stip. on Order dtd 8-18-75 that the time of the defts to answer is extended to 9-30-75 filed. | 60 |
| 10/1/75 | By NEAHER, J.- Order dated 10/1/75 filed that the time of the defts to answer the amended complaint and intervenor's complaint is extended to Nov. 30, 1975 | 61 |
| 10-8-75 | By NEAHER, J.-Stip. on Order dtd 10-7-75 discontinuing the action as against WILLIAM N. BIRNBAUM, ARTHUR VOGEL, SAMUEL L. GRIMES, and SYLVIA RODIN filed. (mg) | 62 |
| 10-15-75 | By NEAHER, J.-Stip. & Order dtd 10-14-75 that remaining defts shall have no further obligation to answer pltffs' amended complaint and the intervenor's complaint etc filed. (mg) | 63 |
| 2-26-76 | Notice of motion ret 3-12-76 for an order granting leave to Catherine M. Vanderwaag and to Dolores T. Virdone to intervene and be named as additional pltffs-intervenors etc filed. | 64 |
| 3-10-76 | Affidavit of Bruce Rodin in response to application of Catherine M. Vanderwaag, Dolores T. Virdone & Harris Turkel for entry of judgment filed. | 65 |
| 3-10-76 | By NEAHER, J.- Order consenting change of atty's for deft filed | 66 |
| 3-12-76 | Before NEAHER, J.-Case called. Pltff's motion granting leave to C.M. Vanderwaag to intervene etc--decision reserved. | |
| 4-12-76 | Notice of motion ret. 4-23-76 for an order directing entry of judgment pursuant to Section 18 of the Settlement Agreement, etc. filed. | 67 |

(over)

DOCKET ENTRIES

| DATE | FILINGS—PROCEEDINGS | CLERK'S FEES PLAINTIFF | CLERK'S FEES DEFENDANT | AMOUNT REPORTED IN EMOLUMENT RETURNS | |
|---|---|---|---|---|---|
| /15/76 | Notice of Motion, ret. 4/23/76 filed re: for judgment on behalf of the Ehrmans,etc. | | | | 68 |
| 4-21-76 | Affidavit of Jeffrey G. Stark filed. | | | | 69 |
| 4-21-76 | By NEAHER,J.-Notice of withdrawal of attys dtd 4-19-76 filed. | | | | 70 |
| -21-76 | By NEAHER,J.-Notice if withdrawal of atty for K. Boklan filed. | | | | 71 |
| 4-23-76 | Affirmation in opposition of David Dean filed. | | | | 72 |
| 5-4-76 | Answering affidavit of K. Boklan in opposition to motion for judgment filed. with ememo of law filed. | | | | 73 |
| ~~5-4-76~~ | | | | | |
| 5-8-76 | Reply affidavit of Richard B. Dannenberg filed. | | | | 75 |
| 5-8-76 | Memorandum of pltffs in reply filed. | | | | 76 |
| 6-4-76 | Notice of motion ret 3-12-76 granting motion of Harris Turkel to intervene as additional pltff-intervenor etc filed. | | | | 77 |
| 6-4-76 | Memorandum in support of application etc filed. | | | | 78 |
| 6-4-76 | Affidavit of deft Vogel filed. | | | | 79 |
| 6-4-76 | Affidavit of Seymour Vogel filed. | | | | 80 |
| 6-4-76 | Reply memorandum of deft Vogel filed. | | | | 81 |
| 6-4-76 | Reply affidavit of Dannenberg filed. | | | | 82 |
| 6-8-76 | By NEAHER, J. - Memorandum and Order dtd 6-7-76 granting applications to intervene and for entry of separate judgment filed. A form of judgment to be submitted on notice to all other parties.(copies mailed) | | | | 83 |
| 6-28-76 | Notice of settlement of final judgment and order filed. | | | | 84 |
| 6-28-76 | By NEAHER,J-FINAL JUDGMENT & ORDER dtd 6-28-76 that the applications to intervene as pltffs for pursposes of the entry of judgment are granted etc. [illegible] See judgment. | | | | |
| | See document #84. | | | | ---- |
| 6-29-76 | Notice of motion for judgments ret 7-2-76 filed. | | | | 85 |
| 7-6-76 | By NEAHER,J Proposed final judgment & Order filed. | | | | 86 |
| 7-21-76 | Notice of Appeal by deft Vogel filed | | | | 87 |
| 7-22-76 | Undertaking for Costs on Appeal filed | | | | 88 |
| 7-30-76 | Notice of Appeal by deft Boklan filed | | | | 89 |
| 8-16-76 | Entire file certified and mailed to C of A, N.Y., 8/24/76 acknowledgment rec'd from C of A for receipt of record on appeal and filed. | | | | |

THE FOLLOWING ARE THE PORTIONS OF THE APPENDIX DESIGNATED BY DEFENDANTS-APPELLANTS VOGEL AND BOKLAN.

PLAINTIFFS' AND INTERVENOR-PLAINTIFFS' MOTION FOR JUDGMENT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

KARL M. NEIMAND, SYDNEY JARKOW, ARTHUR A. INGRAM, SIDNEY MISHCON, MORRIS GUDWIN, and EDWARD A. PALLACK,

Plaintiffs,

-and-

GEORGE COOPER, LEONARD MILTON, DOROTHY LEVESS, BERNARD S. KANTON, VAN BAALEN HEILBRUN & CO., INC., EMPLOYEES PROFIT SHARING PLAN AND TRUST, MORTIMER EHRMAN, RICHARD EHRMAN, JACK ORLOFF, ALEXANDER DAVIS, DAVID HERSHBERG, EVA GLASS, and MELVIN HIRSCHBERG,

Plaintiff-Intervenors,

-and-

GEORGE SCHWARTZ, MATTHEW STEIN, ABRAHAM GOLDFARB, EUGENE COHN, MAE COHN, and MARGARET COHN,

Additional Plaintiff-Intervenors,

74 Civ. 970 (EN)

-against-

MENDON PROPERTIES, INC., PARKHAM DEVELOPMENT CORP., SEYMOUR VOGEL, KENNETH E. BOKLAN, EUGENE RODIN, BRUCE RODIN, WILLIAM N. BIRNBAUM, SY VOGEL ASSOCIATES, RILLSTONE PROPERTIES, INC., GODSBERG REALTY CORP., BYERLY PROPERTIES, INC., GROUP ADMINISTRATORS CORP., TAMERLANE PROPERTIES, INC., HARTWICK PROPERTIES, INC., COLE-HUNT DEVELOPMENT CORPORATION, BERVO ASSOCIATES, INC., ARTHUR VOGEL, SAMUEL L. GRIMES and SYLVIA RODIN,

Defendants.

----------x

NOTICE OF MOTION FOR JUDGMENT

PLAINTIFFS' AND INTERVENOR-PLAINTIFFS' MOTION FOR JUDGMENT

S I R S :

PLEASE TAKE NOTICE that upon the "Purchase Agreement" dated as of July 17, 1975 providing for the settlement of this action (hereinafter referred to as the "Settlement Agreement"), upon the annexed affidavits of RICHARD B. DANNENBERG, KARL M. NEIMAND, ARTHUR A. INGRAM and BERNARD S. KANTON and upon all the prior proceedings herein, the undersigned will move this Court in Courtroom number 2 at the United States District Court, for the Eastern District of New York, 225 Cadman Plaza East, Borough of Brooklyn, State of New York, on the 23rd day of April, 1976 at 10:00 A.M. thereon or as soon as counsel can be heard, for an order directing the entry of judgment pursuant to Section 18 of the Settlement Agreement as follows:

(i) On behalf of Karl M. Neimand:

| Defendants | Amount of Proposed Judgment |
|---|---|
| Eugene Rodin | $ 453,650.77 |
| Bruce Rodin | 453,650.77 |
| Seymour Vogel | 171,796.65 |
| Sy Vogel Associates | 171,796.65 |
| Kenneth E. Boklan | 171,796.65 |
| Group Administrators Corp. | 171,796.65 |
| Hartwick Properties, Inc. | 171,796.65 |
| Rillstone Properties, Inc. | 164,094.37 |
| Mendon Properties, Inc. | 161,057.57 |

(ii) On behalf of Arthur A. Ingram:

| | |
|---|---|
| Eugene Rodin | $ 136,469.51 |
| Bruce Rodin | 136,469.51 |
| Seymour Vogel | 46,090.29 |
| Sy Vogel Associates | 46,090.29 |
| Kenneth E. Boklan | 46,090.29 |
| Rillstone Properties, Inc. | 69,825.14 |
| Godsberg Realty Corp. | 48,715.77 |
| Mendon Properties Inc. | 66,644.37 |
| Tamerlane Properties, Inc. | 46,090.29 |
| Bervo Associates, Inc. | 46,090.29 |

PLAINTIFFS' AND INTERVENOR-PLAINTIFFS' MOTION FOR JUDGMENT

(iii) On behalf of Bernard S. Kanton:

| Defendants | Amount of Proposed Judgment |
|---|---|
| Eugene Rodin | $ 256,377.80 |
| Bruce Rodin | 256,377.80 |
| Seymour Vogel | 256,377.80 |
| Sy Vogel Associates | 256,377.80 |
| Kenneth E. Boklan | 256,377.80 |
| Group Administrators Corp. | 127,062.07 |
| Hartwick Properties, Inc. | 127,062.07 |
| Mendon Properties, Inc. | 129,315.73 |
| Tamerlane Properties, Inc. | 129,315.73 |
| Bervo Associates, Inc. | 129,315.73 |

Or, in the alternative, for an order

1) granting leave to ROSE ORLOFF, LEONARD MILTON, ROBERT WOLFF, BENJAMIN JAGENDORF, ETHEL REIBSTEIN, RALPH MAXON, LESTER MISHCON, RICHARD MOODNICK, SEYMOUR MEYER, HARRIS GROTEN, EVA GLASS, BRIAN GOLDIN, FLORA W. GOLDIN, JAMES GRAD, GERTRUDE HEINS GROTEN, MORRIS BELITZ, HERMAN TEITZ and GLADYS F. TEITZ to intervene as additional plaintiff-intervenors solely for the purposes of the entry of judgment on his or her respective behalf, pursuant to Section 18.2 of the Settlement Agreement; and

2) for the entry of judgment pursuant to Section 18 of the Settlement Agreement on behalf of all persons who are signatories to the Settlement Agreement as Initial Sellers or Additional Sellers (hereinafter referred to collectively as "Sellers"), said individuals being listed on Schedule 1 hereto for judgments as against each of the defendants in the respective amounts as listed on Schedule 1 hereto which judgments

| As Against Defendant: | (Aggregate) |
|---|---|
| EUGENE RODIN | $2,615,645.88 |
| BRUCE RODIN | 2,615,645.88 |
| SEYMOUR VOGEL | 1,617,835.01 |

PLAINTIFFS' AND INTERVENOR-PLAINTIFFS' MOTION FOR JUDGMENT

| As Against Defendant: | (Aggregate) |
|---|---|
| Seymour Vogel Associates | $1,617,835.01 |
| Kenneth Boklan | 1,617,835.01 |
| Mendon Properties, Inc. | 1,202,623.66 |
| Parkham Development Corp. | 446,221.13 |
| Hartwick Properties | 591,645.00 |
| Group Administrators, Inc. | 591,645.00 |
| Rillstone Properties, Inc. | 494,384.76 |
| Godsberg Realty Corp. | 179,663.19 |
| Tamerlane Properties, Inc. | 579,968.88 |
| Bervo Associates Inc. | 579,968.88 |

together with appropriate interest and reasonable taxable costs, and for such other relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that this Application for Entry of Judgment is predicated on a default under Section 17.1 (a) of the Settlement Agreement, the failure to make timely payment of the Front Money Contributions due April 6, 1976.

Pursuant to Local Rule 9(a)(2), opposing affidavits and answering memoranda are to be served on or before April 20, 1976.

Dated: New York, New York
April 8, 1976

Yours, etc.

LIPPER, LOWEY & DANNENBERG

By: Richard B. Dannenberg
A Member of the Firm

Attorneys for Plaintiffs and
Plaintiffs-Intervenors
747 Third Avenue
New York, New York 10017
759-1504

EHRMANS' NOTICE OF MOTION FOR JUDGMENT.

S I R S :

PLEASE TAKE NOTICE that upon the "Purchase Agreement" dated as of July 17, 1975, providing for the settlement of this action (hereinafter referred to as the "Settlement Agreement"), upon the annexed affidavits of Mortimer H. Ehrman, Richard K. Ehrman, Samuel K. Ehrman and William A. Ehrman, the motion papers on behalf of plaintiffs and plaintiff-intervenors dated April 8, 1976, and filed on or about April 9, 1976 seeking the entry of judgment, and upon all the prior proceedings herein, the undersigned will move this Court in Courtroom number 2 at the United States District Court, for the Eastern District of New York, 225 Cadman Plaza East, Borough of Brooklyn, State of New York, on the 23rd day of April, 1976 at 10:00 A.M. thereon or as soon as counsel can be heard, for an order directing the entry of judgment pursuant to Section 18 of the Settlement Agreement as follows:

(i) On behalf of Mortimer H. Ehrman

| Defendants | Amount of Proposed Judgment |
|---|---|
| Seymour Vogel | $ 24,317.39 |
| Sy Vogel Associates | 24,317.39 |
| Kenneth E. Boklan | 24,317.39 |
| Eugene Rodin | 24,317.39 |
| Bruce Rodin | 24,317.39 |
| Parkham Development Corp. | 23,317.39 |

(ii) On behalf of Richard K. Ehrman

| | |
|---|---|
| Seymour Vogel | 10,887.82 |
| Sy Vogel Associates | 10,887.82 |
| Kenneth E. Boklan | 10,887.82 |
| Eugene Rodin | 22,938.70 |
| Bruce Rodin | 22,938.70 |
| Parkham Development Corp. | 10,887.82 |
| Mendon Properties, Inc. | 12,050.88 |
| Rillstone Properties, Inc. | 12,050.88 |

together with appropriate additional interest from March 1, 1976 to the date of entry of judgment;

(iii) On behalf of Samuel K. Ehrman

| Defendants | Amount of Proposed Judgment |
|---|---|
| Seymour Vogel | $13,173.72 |
| Sy Vogel Associates | 13,173.72 |
| Kenneth E. Boklan | 13,173.72 |
| Eugene Rodin | 23,511.20 |
| Bruce Rodin | 23,511.20 |
| Parkham Development Corp. | 13,173.72 |
| Mendon Properties, Inc. | 10,337.48 |
| Rillstone Properties, Inc. | 10,337.48 |

(iv) On behalf of William A. Ehrman

| | |
|---|---|
| Seymour Vogel | 12,310.81 |
| Sy Vogel Associates | 12,310.81 |
| Kenneth E. Boklan | 12,310.81 |
| Eugene Rodin | 24,361.69 |
| Bruce Rodin | 24,361.69 |
| Parkham Development Corp. | 12,310.81 |
| Mendon Properties, Inc. | 12,050.88 |
| Rillstone Properties, Inc. | 12,050.88 |

together with appropriate additional interest from March 1, 1976 to the date of entry of judgment; and for such other and further relief as the Court deems just and proper.

Dated: New York, New York
April 12, 1976

Yours, etc.

LIPPER, LOWEY & DANNENBERG

By: _____
A Member of the Firm

Attorneys for Plaintiffs and
Plaintiff-Intervenors
747 Third Avenue
New York, New York 10017
759-1504

AFFIDAVIT OF SEYMOUR VOGEL IN OPPOSITION TO PLAINTIFFS' AND INTERVENOR-PLAINTIFFS' MOTION.

STATE OF NEW YORK )
: SS.:
COUNTY OF NASSAU )

SEYMOUR VOGEL, being duly sworn, deposes and says:

1. I am one of the defendants in the above action. I am also the sole owner of defendant SY VOGEL ASSOCIATES and the sole shareholder of the defendants MENDON PROPERTIES, INC., BYERLY PROPERTIES, INC., TAMERLANE PROPERTIES, INC., PARKHAM DEVELOPMENT CORP., GROUP ADMINISTRATORS CORP., COLE-HUNT DEVELOPMENT CORP. and HARTWICK PROPERTIES CORP. I make this affidavit on my own behalf and on behalf of all the other defendants mentioned in the preceding sentence.

2. The motions in opposition to which this affidavit are made are motions in which the plaintiffs and the intervenor-plaintiffs request the Court to grant them affirmative relief against me and the above entities in the form of judgments against each of us for the total sum of $1,617.835.01(or for $535,000.00 on another basis), plus interest thereon and taxable costs and disbursements. The Court is asked to grant these judgments purportedly as a carrying out of the terms of a "Settlement Agreement" among the parties to this action, which "Agreement" is dated as of July 17, 1975.

AFFIDAVIT OF SEYMOUR VOGEL IN OPPOSITION TO PLAINTIFFS' AND INTERVENOR-PLAINTIFFS' MOTION

3. I am informed by my attorney that on the basis of my description of the circumstances under which this "Settlement Agreement" was "negotiated" with me and under which I executed this "Agreement," the plaintiffs are not entitled to the judgments they seek on these motions. The purpose of this affidavit is to set forth those circumstances.

4. According to my diary I participated in negotiating meetings on this "Agreement," from August 20, 1974 through March 4, 1975. My attorneys at that time, Rogers & Wells, participated in numerous negotiation sessions without me. I had numerous meetings with my attorneys to discuss the negotiations as they progressed.

5. Almost from the beginning of the negotiations I and the other individual defendants were subjected to continuous threats of criminal prosecution and other similar action. Thus:

(a) A negotiation meeting was held on August 22, 1974, late in the afternoon, at the office of Rogers & Wells. Among those present were Robert Larsen, of that firm; Bernard S. Kanton, in his dual capacity as one of the intervenor-plaintiffs; Stephen Lowey, his co-counsel, of the firm of Lipper, Lowey & Dannenberg; and Eugene Rodin, Kenneth Boklan and I, individual defendants. At this meeting we offered to rescind the entire transaction and return all moneys paid by the plaintiffs. Mr.

Kanton demanded substantially more than this. When we resisted this demand he became very abusive and stated that unless we agreed to a deal which would be entirely satisfactory to him he would go to the Nassau County District Attorney and press criminal charges against us; that he would file complaints against us with the SEC and the Internal Revenue Service; all of which would tie us up in investigations for a long time and might finally put us all in jail. In the case of Mr. Boklan, who is a member of the New York Bar, he also threatened to make a complaint to the "Bar Association." Although Mr. Lowey did not join in these threats, he remained silent while they were being made and never stated that he did not join in them.

(b) Similar threats were repeated by Mr. Kanton at subsequent meetings which I attended. At no time were these threats disavowed by Mr. Lowey or by Mr. Richard Dannenberg, who replaced him in the negotiations. On at least one such occasion Mr. Kanton took me aside for a private conversation in which he told me that I had better agree to his terms and get the other defendants to do so, too, or else we would all be charged criminally.

(c) With respect to negotiation meetings which the defendants did not attend, I was informed by Mr. Larsen that similar threats were frequently referred to by Mr. Kanton if we did not agree to all his terms.

AFFIDAVIT OF SEYMOUR VOGEL IN OPPOSITION TO PLAINTIFFS' AND INTERVENOR-PLAINTIFFS' MOTION

6. This constant barrage of threats wore me down physically and mentally to the point where I could no longer think or operate rationally or effectively. Early in July 1975 I was presented with the proposed "Settlement Agreement" worked up by the attorneys. This draft was about 100 pages long, with about 40 pages of attached Schedules. As I struggled through this document I found that it provided for the following:

(a) Return to the plaintiffs and intervenor-plaintiffs the money paid by all of them, in stated installments.

(b) Substantial interest, to be paid in the above stated installments.

(c) The deposit by me and the defendant EUGENE RODIN, in escrow, of collateral worth about $3,000,000.00 to secure the payments due to the plaintiffs and intervenor-plaintiffs under the "Agreement."

(d) Return to the defendants of the real property previously sold to the plaintiffs, but with control over the terms of any subsequent sale by any of the defendants of any of such properties, as set forth in the "Settlement Agreement."

(e) Virtually automatic entry of judgments against the defendants for the full amounts agreed to be paid if there was a default in <u>one</u> payment.

(f) The opportunity for the plaintiffs to elect to remain in all or parts of the deal.

7. Although I believed (and still do) that I had done absolutely nothing that was wrong throughout the entire transaction, I was nevertheless very much concerned about Mr. Kanton's repeated threats of criminal prosecution if I did not make a deal acceptable to him. Therefore I finally decided to sign the "Agreement," hoping that I would thereby avoid an unjust criminal prosecution, as well as the trouble of responding to investigations by the SEC and the Internal Revenua Service. I was at all times also very much concerned about the effect of such prosecution and investigations on my ability to support my large family (te.. children).

8. Prior to my actually signing the agreement I had heard from one of the prior owners of one of the properties involved that he had been asked to come to the Nassau County District Attorney's office for a conference. However, he told me that he had no information as to whether I was involved in what the District Attorney was doing. I nevertheless consulted with an attorney about this and then voluntarily went to the District Attorney's office and offered to give them whatever information I could. I was told at that time that the settlement of this civil case would have no bearing on the action, if any, which the District Attorney would take. This took place after I had signed the

"Settlement Agreement" but before the "Agreement" was signed by all concerned and delivered to the attorneys for the plaintiffs.

9. I am now informed that it is the law in the State of New York that where an "agreement" is exacted from a party under the pressure and threat of a criminal prosecution, the law will not enforce such an "agreement." This rule clearly applies to my situation and therefore the Court should not now enforce this "Settlement Agreement" on behalf of Mr. Kanton and all the other plaintiffs and intervenor-plaintiffs, whom he represents as co-counsel. I therefore respectfully ask the Court not to grant any of the requested judgments against me, or SY VOGEL ASSOCIATES or any of the defendant corporations listed in paragraph 1 of this affidavit. If the Court concludes that the facts developed in the motion papers are not sufficiently clear to support the application of the above rule of law, I respectfully ask that the Court hold an evidentiary hearing (preceded by full disclosure proceedings) to determine the relevant facts.

Sworn to before me this
3rd day of May, 1976

LEON MALMAN
Notary Public, State of New York
No. 30-2491400
Qualified in Nassau County
Commission Expires March 30, 1977

SEYMOUR VOGEL

AFFIDAVIT OF KENNETH E. BOKLAN IN OPPOSITION TO PLAINTIFFS' AND INTERVENOR-PLAINTIFFS' MOTION.

STATE OF NEW YORK )
SS:
COUNTY OF NASSAU )

KENNETH E. BOKLAN, being duly sworn, deposes and says:

I am one of the Defendants in the above captioned matter and make this Affidavit in Opposition to the application made by the Plaintiffs and Plaintiff-Intervenors for Judgment against me in the total sum, exclusive of interest, costs and disbursements, of $1,617.835.01.

The gravemen of the instant motion is that since there was a default by the Defendats, Eugene Rodin and Seymour Vogel, in the making of the payment of the second installment of Front Money Contribution enumerated in a Settlement Agreement, the movants would, pursuant to the terms of the Agreement, be entitled to enter against me a judgment in the above stated amount.

My opposition to the subject Motion is based upon what I respectfully believe to be a good and valid defense to the application. An investigation of the facts and circumstances surrounding my execution of the so-called Settlement Agreement would, I believe, clearly and unequivocally show that my signature was procured on the agreement as a result of, and solely as a result of, the threats made by Bernard S. Kanton that if the agreement were not signed, criminal prosecution and bar association action would be initiated against me.

"If this matter isn't settled my way, if this agreement isn't signed, I'll go to the D.A. and the Bar Association." That statement made to me by Bernard S. Kanton, was echoed

again and again in virtually identical or similar words during the negotiations leading up to the execution of the Settlement Agreement. I state unequivocally that my signature on the Settlement Agreement was procured on the basis of the threats made to me that if I did not sign, actions would be taken against me by both the District Attorney's Office and the Bar Association. I was told by Mr. Kanton, who presumably was acting in his capacity as one of the party Plaintiffs as well as the lawyer for all party Plaintiffs, that if I did not sign the Settlement Agreement I would be "destroyed". As a matter of fact, etched upon my mind were words Mr. Kanton used in an early conference. "You had better settle this thing my way or you will sell your wife and children before I am through with you".

On the 22nd day of August, 1974, a meeting was held by certain interested ies in this action in an attempt to fairly resolve all of the Plaintiffs' claims. At that meeting there was offered to the Plaintiffs a solution that seemed more than equitable: offer was made to abrogate the entire transactions which were the basis of the Plaintiffs' claims and return to Plaintiffs all of the monies which they had previously paid, thus effectively placing the Plaintiffs in exactly the same position they would have been had they not invested their funds. This remedy was rejected by Mr. Kanton, who stated, that "I want a sweetner". When asked what the "sweetner" was, Mr. Kanton replied that he wanted substantial monies paid to him and his clients over and above the return of their investment. The "sweetner" was a bonus in the sum of almost 33 1/3% more per acre than the acreage price previously heretofore paid by the investors. When this demand was rejected, Mr. Kanton then said

to me the following: "Boklan, I don't want you, you didn't do anything wrong; you're just the tail on the dog. But unless this matter is settled my way, I'm going to the D. A. on everyone and I'm going to the Bar Association on you."

These remarks typified the types of threats to which for the next number of months I was subjected and which ultimately in truth caused me to execute the Settlement Agreement.

With the fear of Bar Association and criminal proceedings hanging over me, with the constant barrage of threats aimed at me directly and through my attorneys, I finally succumbed. I ultimately signed an Agreement which subjected me, even if there were but a single default by others in the making of payment, to the taking of a judgment against me in the sum, not including interest, costs and disbursements of $1,617,835.01. I finally executed the Settlement Agreement providing for this exposure despite the fact that I had absolutely no equity interest whatsoever in the properties which were the subject of the lawsuit.

To reiterate, I executed an agreement providing for an exposure of over $1,600,000.00 in connection with property in which I had no equitable interest. I executed this agreement after months of threats, principally from Mr. Kanton, that my life would be destroyed, my family shamed and ruined, my profession taken from me and my liberty jeopardized and even though I felt as I still feel that I did not act in a criminal or unethical fashion, the vehemence, intensity and even viciousness of the threats made against me ultimately caused me to capitulate, and to execute the Settlement Agreement.

AFFIDAVIT OF KENNETH E. BOKLAN IN OPPOSITION TO PLAINTIFFS' AND INTERVENOR-PLAINTIFFS' MOTION

I welcome indeed the opportunity to present to this Court all of the relevant facts in connection with the subject matter of this action and I would be pleased to testify under oath, to subject myself to a rigorous and lengthy cross-examination, and to have this Court personally weigh and evaluate the truth of the statements contained in this Affidavit.

It is my understanding of the extant law of this state that an Agreement executed as the result of the threat of criminal prosecution is not enforceable and indeed my signature on that Settlement Agreement was certainly coerced in that fashion ("Sign it or I go to the D. A. and Bar Association). Therefore, I respectfully request that this Court not grant the demand of the Plaintiffs that judgment be entered against me. Again, I reiterate my complete willingness to be fully examined under oath as to all of the facts and circumstances surrounding this Affidavit and as to the threats and coercion to which I was subject and which ultimately resulted in the execution of the subject Settlement Agreement.

Kenneth E. Boklan
KENNETH E. BOKLAN

Sworn to before me this

3rd day of May, 1976.

Ellen M. Nantz
ELLEN M. NANTZ
NOTARY PUBLIC State of New York
No. 30-2047375
Qualified in Nassau County
Commission Expires March 30, 1977

REPLY AFFIDAVIT OF RICHARD B. DANNENBERG TO THE ANSWERING AFFIDAVITS OF VOGEL AND BOKLAN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - - - -X

KARL M. NEIMAND, et al.,

Plaintiffs,

-and-

GEORGE COOPER, et al.,

Plaintiff-Intervenors,

-and-

GEORGE SCHWARTZ, et al.,

Additional Plaintiff-Intervenors,

-against-

MENDON PROPERTIES, INC., et al.,

Defendants.

74 Civ. 970 (EM)

REPLY AFFIDAVIT OF RICHARD B. DANNENBERG TO THE ANSWERING AFFIDAVITS OF VOGEL AND BOKLAN.

- - - - - - - - - - - - - - - - - - - - - - - - - -X

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK)

RICHARD B. DANNENBERG, being duly sworn, deposes and says:

1. I have read the affidavit of Bernard S. Kanton in reply to the answering affidavits of Messrs. Boklan and Vogel sworn to the 3rd day of May, 1976. I corroborate the facts set forth in the affidavit of Mr. Kanton with respect to the events that occurred in this action from October 1974 to date. Rather

than repeat the facts as set forth in Mr. Kanton's affidavit, the facts hereinafter set forth will deal principally with certain communications with Seymour Vogel and his counsel, Robert Larsen of Rogers and Wells, from December 1975 to date. The subjects of these communications were the preservation of the "Indianapolis Collateral" as that term is defined under the "Agreement dated as of July 17, 1975" (the "Settlement Agreement") and the sale of the "220 Property" pursuant to a contract of sale between Charles Hecht & Company, the Fiscal Agent under the Settlement Agreement, and Martin Ettore, et al in March 1976. These activities of Seymour Vogel, including those of Kenneth Boklan, establish that they ratified and confirmed the Settlement Agreement and in no way sought to disaffirm it.

3. At no time prior to May 3, 1976 did Seymour Vogel or Kenneth Boklan say to me that they were coerced or threatened in any manner into settling this action or in executing the Settlement Agreement. To the contrary, all of their conduct were in support and in ratification thereof. As examples, the following facts relative to the Indianapolis Collateral and the 220 Property must be considered.

Re: The Indianapolis Collateral

In December, 1975 Seymour Vogel personally sought to raise money from one Mr. Milton Levin in order to attempt to re-finance the then default under the Indianapolis Collateral.

REPLY AFFIDAVIT OF RICHARD B. DANNENBERG TO THE ANSWERING AFFIDAVITS OF VOGEL AND BOKLAN

During the months of December 1975 and January 1976, Seymour Vogel sought to elicit my approval to a refinancing of the Indianapolis Property and attempted to set up a meeting between myself and one Milton Levin.* During that period, with the permission of Rogers and Wells, I had more than one dozen telephone conversations with Seymour Vogel and met with him on several occasions personally, all with a view to working out some arrangement to preserve the Indianapolis Collateral. During the months of February and March, 1976, additional conversations and meetings were had. On March 6, 1976 Mr. Vogel accompanied by his attorney, Robert Larsen, met with me at my office to discuss the preservation of the Indianapolis Collateral, as well as the various legal proceedings which had been commenced by third parties in February and March in connection with that Collateral. Among other things at that meeting, Mr. Vogel authorized the Fiscal Agent to retain Indianapolis counsel to defend litigation. Annexed hereto as Exhibit 1 is a memo dictated to my office on the phone by Mr. Larsen under the date of January 14, 1976 and my letters to Mr. Larsen, et al February 24, 1976 and March 8, 1976, the subject of which was the preservation of this Indianapolis Collateral. The March 9th meeting was in response to my March 8th letter. Annexed as Exhibit 2 is defendant Vogel's letter to me of February 6, 1976 enclosing correspondence relative

* Because there were existing defaults under the Settlement Agreement, the consent of Dannenberg to a refinancing was required. See Section 13.3, pp. 49-51 of the Settlement Agreement.

to the Indianapolis Collateral. The subject of that letter "80 acre tract, Indiana" is the Indianapolis Collateral and Messrs. Duncan, Henderson and Pritchard are the contract vendors of the "Indianapolis Contract" as that term is used and defined under Section 9.1(h) at page 33 of the Settlement Agreement.

Re: The 220 Property

After the closing on October 6, 1975 of the Settlement Agreement, defendant Vogel forwarded to me zoning maps with respect to the 220 Property, the 150 Property and the 109 Property. See his letter of October 28, 1975 annexed hereto as Exhibit 3. The purpose of his sending me the zoning maps was to elicit my cooperation, among other things, in connection with the attempted sale of the properties in South New Jersey so that some recovery might eventually be obtained for the plaintiffs and the other investors who signed the Settlement Agreement.

On Sunday, February 29, 1976, Seymour Vogel visited with me at my residence at 300 East 40th Street, New York, New York, and brought with him for my review a proposed contract of sale to be executed by Charles Hecht & Company, the Fiscal Agent under the Settlement Agreement, and one Martin Ettore and another for the sale of the 220 Property. That contract was prepared by the defendant, Kenneth E. Boklan. A copy of the printed portion of that Agreement (excluding the riders and schedules) is annexed

hereto as Exhibit 4. That Agreement was executed and delivered by Charles Hecht & Company, the Fiscal Agent, on March 4, 1976.* It was executed by the Fiscal Agent pursuant to my instructions as contained in a letter of March 1, 1976. Seymour Vogel participated in the closing of that contract. See letter of March 5, 1976. The three letters referred to are annexed as Exhibit 5.

That contract of Sale provides for a July 15th title closing, provided the Vendees do not withdraw pursuant to an option to be exercised by July 1. On March 30, 1976 Mr. Vogel called me to request my approval of an extension of the closing date for six months. That proposed extension was the subject of a conference at my office on April 9, 1976 at which the defendants Eugene Rodin and Seymour Vogel were present, as well as their respective counsel, George Soll and Robert Larsen.

Mr. Vogel's own conduct after his execution of the Settlement Agreement and its closing establishes that he was seeking to perform under that Settlement Agreement and not disaffirm it. Boklan joined with him.

4. The claims now being made for the first time with respect to coercion must be characterized as specious and solely the afterthoughts of newly substituted counsel. They are made

* The Fiscal Agent is a party to the Settlement Agreement and its status was created thereunder. Dannenberg's approval was required by Section 10.1.

solely to impede the plaintiffs and to delay the entry of judgment. It cannot be denied that the Settlement Agreement was negotiated over a period of at least four months and was the subject of numerous drafts. It cannot be denied that a period of eleven days elapsed between the date that Messrs. Vogel and Boklan executed it and the date that their counsel delivered it to plaintiffs' counsel; and another seventy days passed before the closing occurred under the Settlement Agreement.

The only personal contact that the plaintiffs' counsel had with either Vogel or Boklan for the period of some ten months prior to the closing of the Settlement Agreement was a settlement conference in December, 1974 at the offices of Rogers and Wells when they were at all times represented by their counsel who were present and at the deposition of Boklan at the offices of Rogers and Wells in February of 1975. If we are to believe what these defendants state in their affidavits, the threats emanating to them from plaintiffs' counsel (whether overt or sub silentio) occurred almost a year before the closing of the Settlement Agreement and more than six months before its execution.

If they acted because of alleged threats made to them in 1975, such threats must have been made by persons other than Bernard Kanton or the members of the Lipper Firm, as there

was just no personal contact (meetings, telephone or otherwise) with these defendants. These defendants do not claim, however, that others made threats.

In fact, Rogers and Wells, a highly respected, national law firm with sophisticated counsel, were very careful to insulate their clients from contact with the plaintiffs or their counsel. All communications prior to December of 1975 on behalf of the plaintiffs and on behalf of these defendants were routed through counsel. If there were coercion, certainly the firm of Rogers and Wells would not have permitted itself to be a party to it, and that firm did not seek to withdraw as counsel until the spring of 1976.

5. Finally, it must be noted that defendant Eugene Rodin does not raise the issue of coercion; nor does he even oppose the entry of judgment. I had occasion to communicate last week with the Nickerson Firm, Dr. Rodin's counsel, and spoke with Geoffrey Kalmus of that firm to inquire whether that firm intended to file answering papers to the applications for judgment. Mr. Kalmus queried: "What could they say? There is no defense." Mr. Kalmus' response is consistent with those provisions of the Settlement Agreement which carefully at Section 18.1 (pages 76-78) set forth the defenses which defendants may interpose properly in opposing an application for the entry of judgment

under the Settlement Agreement. The three-day notice referred to under the Agreement at page 77 and these defenses were negotiated for in the exhaustive bargaining process with defendants' counsel, so as to avoid the very situation which now newly substituted counsel seek to create.

The negotiations in connection with the Settlement Agreement with the Nickerson Firm on behalf of Dr. Rodin were conducted at the same time as those with counsel for the defendants Boklan and Vogel. Messrs. Kalmus and Soll represented Dr. Rodin and, as previously stated, Robert Larsen represented Boklan and Vogel. There were no negotiations conducted with Larsen on behalf of his clients that were not negotiated in the presence of Vogel and Soll. As stated, Dr. Rodin does not claim coercion nor has there been any affidavit submitted from Mr. Larsen.

6. Why then do new counsel in tandem raise these claims. Seymour Vogel has told me he has no assets and if judgment is entered against him he must seriously consider bankruptcy, and that such an event would be totally disruptive of his real estate business. He heretofore advised me that certain judgments were entered against him in Nassau County which he has since satisfied. These judgments allegedly aggregated less than $50,000. I have also learned that in the last year both these defendants have transferred assets and any delay in the entry of judgment will

REPLY AFFIDAVIT OF RICHARD B. DANNENBERG TO THE ANSWERING AFFIDAVITS OF VOGEL AND BOKLAN

delay the day they must be examined in supplementary proceedings and make disclosure of these assets which they transferred, under penalties of perjury.

7. The type of tactics now being used was contemplated. Not only did plaintiffs' counsel seek to limit the period of delay with respect to applications of the entry of judgment and the type of defenses which might be interposed (as stated above), but we bargained for the provision of Section 18.3(v) which provides that a judgment "may, in the discretion of the Court, include an award to the Sellers for their attorneys' fees incurred in obtaining such judgment, if the Court shall find that the defenda opposition to the entry of judgment was frivolous or interpos soley for purposes of delay."

The Lipper Firm expended a total of 32 hours, ( 16 hours of partners and 16 hours of associates) in reviewing the answering papers served on behalf of defendants' Boklan and Vogel, in preparing the reply papers and in researching the applicable law. In this action we have billed partners' time at the rate of $100 an hour and associates' time at the rate of $55 an hour. Accordingly, we request that the Court in directing the entry of judgment direct an award of $ 2,480.00 jointly and severally against the defendants Boklan and Vogel.

Richard B. Dannenberg

REPLY AFFIDAVIT OF RICHARD B. DANNENBERG TO THE ANSWERING AFFIDAVITS OF VOGEL AND BOKLAN

Sworn to before me this

day of May, 1976.

DOUGLAS S. MACKAY
Notary Public, State of New York
No. 41-[illegible]
Qualified in Queens County
Commission Expires March 30, 197[illegible]

-8-

EXHIBIT 1, ANNEXED TO REPLY AFFIDAVIT OF RICHARD B. DANNENBERG.

LIPPER, LOWEY & DANNENBERG
747 THIRD AVENUE
NEW YORK, N. Y. 10017
(212) 759-1504

AARON LIPPER
RICHARD B. DANNENBERG
STEPHEN LOWEY
DOUGLAS S. MACKAY

ATTORNEYS AT LAW

BURTON L. KNAPP
COUNSEL

March 8, 1976

Robert D. Larsen, Esq.
Rogers & Wells
200 Park Avenue
New York, N. Y. 10017

Re: Neimand, et al. v Mendon Properties, et al. -
The Indianapolis Collateral

Dear Bob:

On Saturday, March 6th I met with Ralph Chernin; his attorney, Henry Dein; Joseph W. Harrick; Gregory F. Hahn, the temporary Receiver for Dykstra Properties; and the Receiver's attorney Stephen A. Backer. The meeting took place at 11 A.M. at the offices of Mr. Chernin 3737 North Meridian Street, Indianapolis, Ind. The purpose of the meeting was to attempt to negotiate a sale to Mr. Chernin of the Indianapolis collateral.

Mr. Chernin made an oral offer which he intends to confirm in writing, of $150,000. cash; the assumption of Dykstra's indebtedness to the Duncan group; and the assumption of Dykstra's obligations to architects, surveyors and other professional people.

In the course of negotiations Chernin repeatedly asserted that he was a "50% partner" in the Idianapolis collateral by virtue of an oral agreement he made with Sy Vogel in the latter part of 1974 or early 1975. He claims he is able to corroborate this agreement by testimony of third parties, correspondence and memoranda. He states that he was to have a 50% interest in consideration of his doing all the work in connection with the rezoning and development of the property.

EXHIBIT 1, ANNEXED TO REPLY AFFIDAVIT OF RICHARD B. DANNENBERG

His attorney claims that he is prepared to file suit on behalf of Chernin to set aside the assignment by Dykstra to Hecht & Company on the ground among others that it was made without consideration to Dykstra and was a fraud upon Chernin. Dein and Chernin find it incredible that Hecht & Company and the investors were not aware of Chernin's interest in the property.

I believe you will agree that it is urgent to determine the facts relating to Chernin's allegations. Would you provide us with copies of all relevant documents that may be in your files, Boklan's files or Vogel's files relating to this matter.

With respect to the lawsuit to quiet title I am advised by local counsel that the complaint may be deficient in failing to tender the $267,000. principal paid by or on behalf of Dykstra prior to the current default; that the $267,000. is an asset of Dykstra which would be an asset in the Receivership if made permanent. It also would appear that the zoning application while made in the name of Ralph Chernin is also an asset belonging to Dykstra. We understand however, that a local homeowners and property association, the Eagle Creek Park Association,is seeking by Court proceeding to overturn the decision of the Metropolitan Planning Commission.

Assuming there is no objection from you and George Soll, etc. we are recommending to Hecht & Company that it retain the firm of Backer & Backer of 300 Union Federal Building, 45 No. Pennsylvania Street, Indianapolis, Ind., the attorneys for the Receiver of Dykstra to also represent Hecht in the defense of quiet title action. It would appear that the interests of Hecht and the Receiver are not in conflict. The rate of compensation would be $50. an hour with a retainer on account of $1,000. By a copy of this letter, I am requesting Hecht & Company to send me a check to the order of Backer & Backer for $1,000.

Sincerely,

Richard B. Dannenberg

RBD/c
cc: George Soll, Esq.
Sy Vogel
Eugene Rodin
Harold Bloom

EXHIBIT 1, ANNEXED TO REPLY AFFIDAVIT OF RICHARD B. DANNENBERG

595 MADISON AVENUE
NEW YORK, N. Y. 10022

March 4 1976

PAY TO THE ORDER OF Backer & Backer $1000.00

One Thousand and 00/100 DOLLARS

TOTAL OF INVOICES
LESS % DISCOUNT
LESS
TOTAL DEDUCTIONS
AMOUNT OF CHECK

IRVING TRUST COMPANY
MADISON AVENUE AT 57th STREET, NEW YORK, N.Y. 10022
A Charter New York Bank

Harold H. Dannenberg

⑈0210⑈0067⑈ 15 174 3⑈⑈⑈

Richard B. Dannenberg, Esq.
Lipper, Lowey & Dannenberg
747 Third Avenue
New York, N.Y. 10017

Re: Neimand, et al. v Mendon Properties, et al. -
The Indianapolis Collateral

Dear Richard,

Pursuant to your request and as approved by Messrs. Soll and Larsen I am enclosing a check in the amount of $1000. payable to the order of Backer & Backer.

Backer & Backer, attorneys for the Receiver of Dykstra will represent Charles Hecht & Company in the defense of the quiet title action.

Sincerely,

Harold H. Dannenberg

HHB:aw

Encl.

cc: Robert Larsen, Esq.
George Soll, Esq.

EXHIBIT 1, ANNEXED TO REPLY AFFIDAVIT OF RICHARD B. DANNENBERG

LIPPER, LOWEY & DANNENBERG
747 THIRD AVENUE
NEW YORK, N. Y. 10017
212 759-1504

ATTORNEYS AT LAW

BURTON L. KNAPP
COUNSEL

AARON LIPPER
RICHARD B. DANNENBERG
STEPHEN LOWEY
DOUGLAS S. MACKAY

February 24, 1976

Robert Larsen, Esq.
Rogers & Wells
200 Park Avenue
New York, New York 10017

Re: Neimand, et al. vs. Mendon Properties, Inc., et al. - The Purchase Agreement dated as of July 17, 1975 and specifically the "Indianapolis Collateral"

Dear Bob:

I have been advised of the following developments with respect to the Indianapolis Collateral:

1) A receiver has been appointed for Dykstra Properties, Inc.. Stephen A. Backer of Backer & Backer is the attorney for the receiver, who, I believe, is Gregory Hahn, Esq.. The receiver was appointed by Judge Michael Duggan of the Superior Court of Indiana for the County of Marion, on the application of one Ralph Chernin who claims to be a creditor of Dykstra Properties, Inc.;

2) An action was started on behalf of the Duncan Group to quiet title under the contract between the Duncan Group and Dykstra Properties, Inc.;

3) Ralph Chernin is about to file an action to set aside the assignment by Dykstra Properties, Inc. to Charles Hecht & Company;

4) Ralph Chernin has offered to buy out the interest of Charles Hecht & Company for $100,000.

In order that we may make a determination as to whether to defend any one or more of the legal proceedings

EXHIBIT 1, ANNEXED TO REPLY AFFIDAVIT OF RICHARD B. DANNENBERG

already brought or about to be brought would you provide us with facts as to the following:

1) the exact amount of money paid by Dykstra Properties, Inc. to the Duncan Group,

2) the relationship of Ralph Chernin to Dykstra Properties, Inc., e.g., agreements among Chernin, Rodin and Vogel, etc..

Very truly yours,

Richard B. Dannenberg

RBD:ca
cc: Nickerson, Kramer, Lowenstein,
Nessen, Kamin & Soll, Esqs.
Mr. Eugene Rodin
Fink, Weinberger, Fredman & Charney, P. C.
Mr. Bruce Rodin
Mr. Seymour Vogel

EXHIBIT 1, ANNEXED TO REPLY AFFIDAVIT OF RICHARD B. DANNENBERG

January 14, 1976

(Dictated on telephone)

MEMO FROM MR. LARSEN

TO RICHARD B. DANNENBERG

I am calling to report to Mr. Dannenberg two proposals with reference to the raising of funds in connection with the purchase agreement entered into in settlement of the Neimand litigation.

Further, pursuant to my conversation and discussions with you last evening, Mr. Vogel has attempted today to raise additional funds in order to protect the interest of the purchasers under the purchase agreement and the Fiscal Agent with reference to the Indianapolis collateral.

Mr. Vogel has discussed the matter with Mr. Levin who is willing to make available the sum of $300,000 on either of the two following basis:

Basis 1: Mr. Levin would take title to the property and enter into an agreement with the Fiscal Agent whereby the Fiscal Agent could buy the property back within one year at $354,000.

Basis 2: The Fiscal Agent would take title to the property and in turn give Mr. Levin a first mortgage on the property in the principal amount of $300,000 with interest at 18% for one year. The payment schedule on the interest has not been negotiated.

It would be contemplated under either of the two foregoing basis that moneys would be paid to Hecht and disbursed

EXHIBIT 1, ANNEXED TO REPLY AFFIDAVIT OF RICHARD B. DANNENBERG

by Hecht in such manner as directed by Messrs. Vogel and Rodin with the agreement and consent of Dannenberg.

The timing problem is of some concern. The necessary paper work, including the probability that Mr. Levin will want a title policy, probably means that the moneys will not be available for seven to ten days. There are two solutions to the timing problem which are to be considered:

Solution 1: Agreement be entered into with the contract vendor (Duncan) whereby the timing for payment of the final amount due under the contract of sale will be extended for another seven to ten days, assuming a penalty payment per day of extension.

Solution 2: Chernin would attempt to raise the necessary money to buy the property subject to the outstanding contract of sale between the owner of the property and Dykstra Properties (Messrs. Rodin and Vogel).

Mr. Chernin seems amenable to trying to work something out. He has indicated that his preference would be to extend the time in which the final pay ment under the contract of sale is to be made for seven to ten days. He has not yet and will not today contact the contract vendor to see if this is agreeable. There is also some concern that the bank may not make moneys available so long as there is a cloud on the title arising out of the existing contract of sale.

I shall be in my office until about 6:15 P.M. this evening (972-7203). If you are unable to reach me, may I

suggest that you contact Mr. Vogel at 516-295-3177.

Mr. Vogel has not been able to reach Dr. Rodin to secure his view on the proposals outlined above. Mr. Vogel is also under a commitment to bring Mr. Chernin up to date on any new developments sometime this evening.

Thank you.

EXHIBIT 2, ANNEXED TO REPLY AFFIDAVIT OF RICHARD B. DANNENBERG

*Sy Vogel*
*18 West Carver Street*
*Huntington, New York 11743*
*516 421-9111*

February 6, 1976

Richard B. Dannenberg, Esq.
Lipper, Lowey & Dannenberg
747 Third Avenue
New York, New York 10017

RE: 80 acre tract, Indiana

Dear Dick:

I have enclosed a copy of my latest correspondence with Messrs. Duncan, Henderson and Pritchard and will continue to keep you advised.

Very truly yours,

SV:mes
Enclosure

EXHIBIT 3, ANNEXED TO REPLY AFFIDAVIT OF RICHARD B. DANNENBERG

Sy Vogel
18 West Carver Street
Huntington, New York 11743

516 421-9111

October 28, 1975

Richard B. Dannenberg, Esq.
Lipper, Lowey & Dannenberg
747 Third Avenue
New York, New York 10017

RE: Winslow Township, New Jersey

Dear Mr. Dannenberg:

As per Mr. Vogel's instructions, I have enclosed herewith one original and one copy of the zoning maps on the 220 acres, 150 acres and the 109 acres.

Very truly yours,

Barbara Boettjer

Barbara Boettjer
Secretary to Mr. Vogel

bb
Enclosures

EXHIBIT 4, ANNEXED TO REPLY AFFIDAVIT OF RICHARD B. DANNENBERG.

**This Agreement,** *MADE THIS* .....*day of* MARCH ..... *19* 76 .

Between ... CHARLES HECHT & COMPANY, maintaining offices ..... at 595 MADISON Avenue, New York, New York, .....

*of the First Part, hereinafter called the "Seller" and* ..... MARTIN ETTORE, residing at 208 Rte 73 West Berlin N.J. and ..... Cathy Ettore 1347 Bonney St. Camden N.J. .....

*of the Second Part, hereinafter called the "Buyer."*

**Witnesseth,** *That the Seller and Buyer respectively agree to sell and buy ALL* that certain tract or parcel of land and premises situate, lying and being in the Borough of Berlin*in the County of Camden and State of New Jersey, more particularly described in Schedule A, annexed hereto and made a part hereof.

*and Township of Winslow

ONE MILLION SIX HUNDRED TWENTY THREE THOUSAND

*for the price of* NINE HUNDRED SIXTY THREE & 84/100s ($1,623,963.84) *Dollars,* ~~and the following conditions~~ payable as set forth in Schedule B, annexed hereto and made a part hereof. ~~Dollars~~

1. ~~payment~~ .....

2. *Settlement is to take place at* ... the office of Joseph A. Maressa, Esq. ..... 191 White Horse Pike, Berlin, New Jersey ..... *on the* ... 15th ... *day of* ... July ..., *19* 76, *at* 11:00 ... *o'clock* A. M., *which time is of the essence of this agreement, when the Seller shall deliver a* ... Plain ... *warranty deed for the said premises, and the balance of the purchase price is to be paid or secured as* ~~follows~~ set forth in Schedule B, annexed hereto and made a part hereof.

***Such part of purchase price, if any, unpaid at time of settlement, is to be delivered to*** ..... South Jersey Realty Abstract Company ..... ***to be disbursed after*** .... South Jersey Realty Abstract ..... ***Company has completed the necessary continuation search to cover the record date of said deed.***

3. ***In the event of the Buyer not making settlement in accordance with the terms hereof the payment or payments made on account shall, at the Seller's option, be forfeited as liquidated damages for the failure of the Buyer to settle; or be applied on account of the purchase price.***

EXHIBIT 4, ANNEXED TO REPLY AFFIDAVIT OF RICHARD B. DANNENBERG

4. *The title to be delivered shall be a marketable title and insurable by* South Jersey Realty Abstract Company (Title Company) *and shall be free and clear of all encumbrances including municipal liens and assessments and liability for assessments for improvements now constructed (except as herein stated), this clause to be operative as of the date of this agreement, and the title is to be subject to all existing restrictions of record,* [illegible] *and the* [illegible]

5. *In the event that such title cannot be made by the Seller as above, and the Buyer is unwilling to accept such title as the Seller can make,* [illegible] *the above payment or payments shall be returned to the Buyer,* [illegible]

6. *Actual possession is to be given to the Buyer on the day of settlement, except as herein stated*

.....

*If the Buyer accepts possession, with the Seller's consent, before the time of settlement, then the Seller shall be allowed by way of adjustment, interest at 6% on the unpaid balance of the purchase price from the date of possession to the date of settlement.*

7. *Taxes, water and sewer charges, property rentals and other current charges shall be adjusted as of the date of settlement, unless possession be given prior thereto, in which case all such adjustments shall be made as of the date of delivery of possession.*

8. *The Seller shall pay for the drawing of the deed and the New Jersey Realty Transfer Fee, if any be necessary, but all searches, title insurance and other conveyancing expenses are to be paid for by the Buyer.*

9. *This agreement includes all fixtures permanently attached to the building or buildings herein described, and appurtenances; also specifically includes the following items:*

10.

***The words "SELLER" and "BUYER" in this agreement shall be construed to mean both the plural and singular number and to mean not only the party thereby designated, but also his, her or their respective heirs, executors or administrators; or in the event that either or both parties are corporations, its or their successors.***

***This agreement may be assigned by the Buyer with the written assent of the Seller.***

**In Witness Whereof,** *the parties hereto have hereunto set* their hands and seals and ---------- *dated the day and year first above written.*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

CHARLES HECHT & COMPANY

BY: .....[L.S.]
(Seller)

.....[L.S.]

.....[L.S.]
MARTIN ETTORE (Purchaser)

.....[L.S.]
ANTHONY BONETTO (PURCHASER)

EXHIBIT 4, ANNEXED TO REPLY AFFIDAVIT OF RICHARD B. DANNENBERG

STATE OF
COUNTY } ss.:

Be it Remembered, that on this
day of in the year of our Lord one
thousand nine hundred and before
me,
personally appeared
who being by me duly sworn, on his oath saith, that he
is the of
the grantor within named, and that
is the President; that
deponent knows the common or corporate seal of said
grantor and that the seal annexed to the within Agree-
ment is such common or corporate seal; that the said
Agreement was signed by the said President
and the seal of said grantor affixed thereto in the pres-
ence of deponent; the said Agreement was signed, sealed
and delivered as and for the voluntary act and deed of
said grantor for the uses and purposes therein expressed,
pursuant to a resolution of the Board of Directors of said
grantor; and at the execution thereof this deponent sub-
scribed his name thereto as witness.

Sworn and Subscribed the
day and year aforesaid }

STATE OF
COUNTY } ss.:

Be it Remembered, that on this
day of in the year of our Lord one
thousand nine hundred and before
me,
personally appeared

who I am satisfied the grantor mentioned
in the above Agreement and acknowledged that
signed, sealed and delivered the same as
act and deed, all of which is hereby certified.

(NO. 25) THIS IS A LEGALLY BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE

# Agreement
for
# Sale of Real Estate

CHARLES HECHT & COMPANY

to

MARTIN ETTORE

PREPARED BY:

KENNETH E. BOKLAN, ESQ.
18 W. CARVER STREET
HUNTINGTON, NY 11743
(516) 421-9090

Adopted by the Camden County Board of Realtors

345

EXHIBIT 5, ANNEXED TO REPLY AFFIDAVIT OF RICHARD B. DANNENBERG

March 1, 1976

Mr. Harold H. Bloom
Charles Hecht & Co.
595 Madison Avenue
New York, N. Y.

Re: Neimand, et al.
v Mendon Properties, Inc., et al.
The 225 property

Dear Mr. Bloom:

I herewith hand deliver a proposed contract which was delivered to me by Sy Vogel for the sale of the 225 property to Martin Ettore, et al. I have no objection to your executing the contract subject to certain changes as set forth below and providing it is understood that my assent is not intended to be construed as a waiver of any of my clients' rights or a future approval of the right of Sy Vogel Realty Co. or Sy Vogel Realty Co., Inc. to a brokerage commission on future transactions.

I call your attention particularly to the following clause found in the rider:

> "In consideration for the right and option herein granted to the Purchaser, and notwithstanding anything to the contrary hereinbefore contained, the payment this date made in the sum of $35,000.00 shall be deemed to be "non-refundable" and shall be and belong to the Seller herein absolutely".

Sy Vogel tells me that he has spoken with the attorneys for the mortgagees (the Rigolizzo's) who are prepared to accept a check for the interest payment

that was due on January 28, 1976. Vogel will attempt to provide you with at least two checks totalling $35,000.00 (for down payment due on the enclosed contract), one of which will be certified and to your order in the amount of interest due the Rigolizzo's, which you can endorse to the mortgagees in order to expedite payment of the interest due.

Please retain for your files and my files xerox copies of the checks which Vogel will deliver to you.

As to the change in the contract, Boklan's name is to be deleted wherever it appears.

Very truly yours,

Richard B. Dannenberg

RBD/c
enc

cc: George Soll, Esq. (with enclosures)
Robert Larsen, Esq. (without enclosures)

EXHIBIT 5, ANNEXED TO REPLY AFFIDAVIT OF RICHARD B. DANNENBERG

CHARLES HECHT & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS
595 MADISON AVENUE
NEW YORK, N.Y. 10022
(212) 758-7420

March 4, 1976

Senator Joseph A. Maressa,
Daidone & Wade
White Horse Pike at Franklin Avenue
Berlin, New Jersey 08009

Dear Senator Maressa:

I have delivered today to Mr. Seymour Vogel for delivery to you an agreement between Charles Hecht & Company and Martin Ettore, etal covering the sale of certain land in the borough of Berlin in the county of Camden and the State of New Jersey. This contract bears my signature signing for Charles Hecht & Company.

The following changes have been made in the sale contract, which changes I have initialed, as approved by me. I would suggest that upon receipt of the contract that the purchaser initial these changes as well:

1. All references to Kenneth E. Boklan, as attorney, have been deleted.

2. Schedule B - Purchase price has been changed to $1,445,995.20, which has been computed on the basis of 222.4608 acres of land at the rate of $6,500 per acre. The amount of $338,548.84 in cash has been reduced to $297,580.20 and the purchase money mortgage reduced from $448,000 to $311,000.

3. On the first page of Schedule B the inked-in portion has been changed as follows:

   "In the event that the purchasers desire to take title to the Berlin property alone, the total cash payment will be the number of acres in Berlin multiplied by $6,500 with a total of proportionate cash as to the entire deal, namely 23%".

EXHIBIT 5, ANNEXED TO REPLY AFFIDAVIT OF RICHARD B. DANNENBERG

4. On page 3 of the rider to contract, the last paragraph commencing with the words "The parties hereto agree" - - - has been deleted.

5. It is my understanding that with the deletion of the above-mentioned paragraph that if any brokerage commission is to be paid on the sale it is to be paid directly by the purchaser and apart from this contract.

This contract of sale has been signed with the understanding that upon presentment of this signed contract by Mr. Vogel to the buyer he will receive in turn the total of $35,000 which should be covered by two checks, one in the amount of $32,097 payable to the holders of the mortgages or their representatives (Rigolizzo) and the balance in the amount of $2,903 payable to Charles Hecht & Company. I would appreciate that a copy of the check in the amount of $32,097 be made and sent to me with a forwarding letter that this was paid to the within named payee covering interest outstanding on the mortgages covering this property.

Very truly yours,

CHARLES HECHT & COMPANY

HHB:SF

By: Harold H. Bloom
Harold H. Bloom

EXHIBIT 5, ANNEXED TO REPLY AFFIDAVIT OF RICHARD B. DANNENBERG

CHARLES HECHT & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS
595 MADISON AVENUE
NEW YORK, N.Y. 10022
(212) 758-7420

March 5, 1976

George Soll, Esq.
Nickerson, Kramer, Lowenstein,
Nessen, Kamin & Soll
919 Third Avenue
New York, N. Y. 10022

Dear George,

Mr. Seymour Vogel delivered to me today a check in the amount of $2,903 payable to Charles Hecht & Company covering the amount of cash due pursuant to the sales agreement covering certain land in the county of Camden. He also delivered to me a Xerox copy of a check in the amount of $32,097 payable to the order of Frank M. Lario, Jr., Esq., attorney for John Rigolizzo, et ux, et al.

He also informed me that the agreement was executed as amended yesterday, March 4, 1976.

Sincerely,

CHARLES HECHT & COMPANY

By: Harold H. Bloom

HHB:SF

cc: Richard B. Dannenberg, Esq.
Robert D. Larsen, Esq.
Dr. Rodin
Kenneth E. Boklan, Esq.
Bernard S. Kanton, Esq.

REPLY AFFIDAVIT OF BERNARD S. KANTON TO THE ANSWERING AFFIDAVITS OF VOGEL AND BOKLAN.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

| | |
|---|---|
| KARL M. NEIMAND, et al., Plaintiffs, -and- GEORGE COOPER, et al., Plaintiff-Intervenors, -and- GEORGE SCHWARTZ, et al., Additional Plaintiff-Intervenors, -against- MENDON PROPERTIES, INC., et al., Defendants. | 74 Civ. 970 (EN) REPLY AFFIDAVIT OF BERNARD S. KANTON TO THE ANSWERING AFFIDAVITS OF VOGEL & BOKLAN. |

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK)

BERNARD S. KANTON, being duly sworn, deposes and says:

1. The facts hereinafter recited are made, as indicated, on personal knowledge or on information and belief, or are based upon information supplied to me by either Richard B. Dannenberg, Esq., or Stephen Lowey, Esq., of the firm of Lipper, Lowey & Dannenberg (the "Lipper Firm"), co-counsel for the plaintiff and plaintiff-intervenors in this action.

REPLY AFFIDAVIT OF BERNARD S. KANTON TO THE ANSWERING AFFIDAVITS OF VOGEL AND BOKLAN

2. I must state at the outset that the alleged remarks attributed to me almost two years ago by Messrs. Vogel and Boklan in their affidavits are untrue and known by them to be untrue. Meetings at that time where these defendants were present were held in the presence of their then counsel, other defendants, members of the JIM Committee (a Committee of plaintiffs composed of Jarkow, Ingram and Mischon) and others. No such threats were made by me at that time or at any time to these defendants. The present submissions are simply for purposes of delaying entry of judgments against these defendants pursuant to the provisions of the Agreement made as of the 17th day of July, 1975 (the "Settlement Agreement").

3. Almost ten months after the execution of the "Settlement Agreement", and some eight months after the closing thereunder, defendants Boklan and Vogel (through new counsel) now claim, for the first time, that they were induced to settle this action and to execute the Settlement Agreement and to perform thereunder by threats made by me in 1974, and they urge that the Settlement Agreement should not be enforced, and that this coercion vitiates the settlement. As part of the settlement this action was discontinued as against certain of the defendants. The remaining individual co-defendants do not, however, claim that they were coerced. No independent plenary action to set aside the Settlement Agreement has ever been commenced.

REPLY AFFIDAVIT OF BERNARD S. KANTON TO THE ANSWERING AFFIDAVITS OF VOGEL AND BOKLAN

4. At all times Messrs. Vogel and Boklan had been represented by eminent counsel; the litigation was vigorously contested for more than a year prior to the Settlement Agreement; and this Court was kept aware of all proceedings.

5. Under date of October 7, 1975, Geoffrey M. Kalmus of the firm of Nickerson, Kramer, Lowenstein, Nessen, Kamin & Soll (the "Nickerson Firm") wrote to the Court:

> "Dear Judge Neaher:
>
> You will recall that we visited with you in late June to report on the progress of the settlement of this litigation and to explain to you the continuing role of the Court under the rather complex settlement agreement among the parties.
>
> The settlement agreement was signed not long after we met with you and I am pleased to report that the closing of the settlement was effected yesterday. Upon the closing the litigation was discontinued against four of the many defendants but, as the settlement agreement provides, it remains pending against the principal defendants as well as a number of corporations." (Exhibit 1)

At that time no claim had been made that any of the defendants had been coerced or threatened.

6. These claims are made in an attempt to avoid the entry of judgment pursuant to the provisions of the Settlement Agreement. These defendants do not deny that Events of Default have occurred thereunder. It must also be further noted that their co-defendant, Dr. Eugene Rodin, does not oppose the entry of

judgment and co-defendant Bruce Rodin affirmatively suggests to the Court that judgment in fact be entered. Nor do these defendants charge the Lipper Firm with making any threat or charge their prior counsel, the firm of Rogers & Wells, with misconduct or with not having properly represented them.

7. On or about March 2, 1976 the newspapers reported a grand jury indictment in Nassau County against these individual defendants except Bruce Rodin. The article of March 2 in the "Long Island Press" reports that Nassau County District Attorney Dillon said the indictment followed "a year-long investigation by his Commercial Frauds Bureau" (Exhibit 2), which would thus bring that investigation to the Spring of 1975, and before execution of the Settlement Agreement. (See also discussion below).

8. I am advised that Dr. Rodin pleaded guilty to the indictment and that Messrs. Vogel and Boklan have pleaded not guilty (Exhibit 3). I am further advised that a complaint to the Bar Association Grievance Committee and its investigation long antedated July 17, 1975. The investigation by the Grievance Committee was initiated by a letter from Mr. Dannenberg of January 14, 1975 to the Appellate Division, Second Department. That letter was written in accordance with Ethical Consideration EC1-4 of the Code of Professional Responsibility which provides:

> "The integrity of the profession can be maintained only if conduct of lawyers in violation of the Disciplinary Rules is brought to the attention of the proper

> officials. A lawyer should reveal voluntarily to these officials all unprivileged knowledge of conduct of lawyers which he believes clearly to be in violation of the Disciplinary Rules."

9. As stated, the claims now presented are not presented through Rogers & Wells, Esqs., the attorneys who represented Messrs. Vogel, Boklan and their corporations from July 1974 to April 1976 in this action. As stated above, I emphatically deny the statements allegedly attributable to me in Messrs. Boklan's and Vogel's affidavits; but, assuming arguendo, for the purposes herein that they were made, the actual facts relative to the settlement of this action, the execution of the Settlement Agreement, and the prior contested proceedings over a period of two years, belie the submissions of Messrs. Vogel and Boklan. Additional relevant facts are as follows:

(i) I am advised that the Settlement Agreement was executed by the defendants on Thursday, July 17, 1975, at the offices of the Nickerson Firm who were then the attorneys for the defendant Eugene Rodin, and the corporate defendants Rillstone Properties, Inc. and Godsberg Realty Corp. Upon information and belief, present were Messrs. Boklan, Vogel, both Rodins, George S. Soll and Geoffrey M. Kalmus of the Nickerson Firm, Robert Larsen of Rogers & Wells representing Boklan and Vogel and their corporations, and Jeffrey Starke representing Bruce Rodin. Neither I nor any member of the Lipper Firm nor any plaintiff was present.

REPLY AFFIDAVIT OF BERNARD S. KANTON TO THE ANSWERING AFFIDAVITS OF VOGEL AND BOKLAN

It has also been revealed that at that time defendants delivered checks to the Nickerson Firm totalling $278,948.18, of which amount Messrs. Vogel and Boklan delivered $99,278.69.

(ii) I am further advised that the Settlement Agreement as executed by the defendants was initially to be delivered to the Lipper Firm at the offices of the Nickerson Firm on Friday morning, July 18, 1975 pursuant to arrangements previously made. On Thursday night, July 17th, in telephone conversations, Mr. Dannenberg, of the Lipper Firm, was notified by Messrs. Larsen and Soll that while the defendants had executed the Settlement Agreement and had delivered the necessary moneys to the Nickerson Firm, the defendants and their counsel needed time to consider the recent developments, namely that the defendants had just learned of a pending investigation by the office of the District Attorney of Nassau County. However, they offered to Mr. Dannenberg the opportunity to view the fact that the Settlement Agreement had been executed by the defendants and the moneys delivered. Defendants' counsel stated that they learned of the investigation by virtue of the fact that certain of the investors (not then plaintiffs) had reported to their clients, having received letters from the Office of the District Attorney. Annexed hereto as Exhibit 4 is an example of a letter, furnished to Mr. Dannenberg by counsel for Mrs. Vanderwaag, that was sent out by the Nassau District Attorney. It confirms that the investigation was pending before the execution of the Settlement Agreement.

REPLY AFFIDAVIT OF BERNARD S. KANTON TO THE ANSWERING AFFIDAVITS OF VOGEL AND BOKLAN

(iii) Mr. Dannenberg accepted the opportunity to view the signatures of the defendants on the Settlement Agreement and to view the checks, and went to the offices of the Nickerson Firm on the morning of Friday, July 18th. Present were Mr. Soll, representing Dr. Rodin, and Robert Larsen representing Messrs. Vogel and Boklan. I was not present. Mr. Dannenberg advises me that defendants' counsel again reiterated what they had told him the previous night, namely, that counsel and their clients were upset about the recent developments; that no conclusion had as yet been reached by their clients and themselves as to whether to proceed with the Settlement, and that counsel and their clients needed time to consider these developments.

(iv) Prior thereto certain of the plaintiffs had executed the Settlement Agreement and at this July 18th meeting, Mr. Dannenberg advises that he exhibited those signatures to defendants' counsel and stated to them that his clients were prepared to proceed with the Settlement, irrespective of the pending investigation by the Nassau County District Attorney's Office. The exchange of the executed Settlement Agreement did not take place at that time, and it was agreed that defendants' counsel would advise Mr. Dannenberg whether they and their clients would proceed with the settlement. I have been advised that in or about August, 1975 the defendants Vogel and Boklan retained additional counsel (not present counsel in this action) in Nassau

County to represent and advise them regarding the pending criminal investigation. [I and several of the plaintiffs did subsequently testify before the Grand Jury].

(v) Eleven days after the execution of the Settlement Agreement on July 17, 1975, the defendants, acting through their counsel, advised Dannenberg that defendants Vogel, Boklan and the two Rodins had decided to exchange the executed Settlement Agreement to the extent that they had been executed by certain of the defendants and certain of the plaintiffs. The exchange of such documents took place at the office of the Lipper Firm on July 28, 1975. None of the individual defendants were present. At that meeting the Nickerson Firm was acting on behalf of all defendants' counsel. Under date of July 31, 1975 the Nickerson firm confirmed the delivery of documents (Exhibit 5).

(vi) Since 45 investors were involved in the transactions complained of in the complaint, several of whom were not plaintiffs, defendants in the course of the settlement negotiations during the spring of 1975 bargained for the right to obtain unanimity of action by all investors, either by having them participate as parties to the settlement and executing the Settlement Agreement, or by electing to remain a co-venturer with the defendants by executing a separate and different agreement prepared by defendants' counsel, entitled "Agreement Among the Remaining Venturers"). Because of the number of individuals

involved, the plaintiffs were given an opportunity to obtain this unanimity. The defendant Eugene Rodin participated in the undertaking. In August of 1975 there was sent out over Dr. Rodin's signature a letter under date of July 21, 1975 urging investors to sign either of the two agreements (See Exhibit 6).

(vii) By October 1975 all but two of the investors had agreed to sign the Settlement Agreement, and the remaining two had indicated that they might. Under these circumstances defendants and their counsel chose to proceed with the settlement. They could have withdrawn or raised the issues now being raised for the first time. On October 6, 1975 the settlement closed.

(viii) From October of 1975 to December of 1975 the defendants performed under the Settlement Agreement, without default. From December 1975 to April 1976 they attempted to preserve certain of the collateral under that Agreement (See Dannenberg affidavit).

10. I have been advised that at no time from October 1975, when this Court was advised of the consummation of the settlement, until May 1976, did any defendant or his counsel ever state, or intimate in any form, directly or indirectly, that the settlement was coercive or that they had settled this action under the pressure and threat of a criminal prosecution. See Mr. Dannenberg's affidavit attached hereto.

REPLY AFFIDAVIT OF BERNARD S. KANTON TO THE ANSWERING AFFIDAVITS OF VOGEL AND BOKLAN

11. I personally have not been in the presence of Kenneth Boklan or Seymour Vogel since December 1974 when I attended a settlement conference at the offices of Rogers & Wells. The deposition of Mr. Boklan was commenced in this action on February 28, 1975 at the firm of Rogers & Wells. I was not present. As stated previously, when the defendants executed the Agreement, when the executed Settlement Agreements were exchanged, and when the closing took place only the attorneys were present and not the principals. See also the Dannenberg affidavit.

12. Defendants in their answering affidavits refer to alleged threats made to them in the Fall of 1974. At that time defendants agreed to a different settlement. That settlement was brought to the attention of this Court by Mr. Lowey of the Lipper Firm and Mr. Larsen of Rogers & Wells when they appeared before Judge Neaher on September 16, 1974. That settlement, which was a favorable settlement to the plaintiffs, never was consummated because the defendants reneged. (See letter of Mr. Lowey to the Court of October 10, 1974, annexed as Exhibit 7.

13. The settlement embodied in the present Settlement Agreement is less favorable than the October, 1974 Agreement, i.e., the earlier Agreement was to be secured by collateral having a value of over $1,000,000 while the collateral ultimately negotiated under the existing Settlement Agreement as of July 17, 1975

had an alleged value, net of mortgages, of about $600,000; the earlier Agreement provided that the defendants were to have performed by September, 1975, while the existing Settlement Agreement provides that defendants have until September 1977 to perform, an extension of two years. Thus Messrs. Vogel and Boklan benefited by their having reneged under the earlier Agreement and then having made a series of motions seeking to delay the prosecution of this action. This Court is familiar with the contested motions and proceedings during the period of October 1974 to February 1975.

14. The Settlement Agreement of July 17, 1975 was the subject of more than a dozen drafts. It was reviewed and discussed among counsel for the respective parties at many meetings prior to its execution. At no time were the defendants themselves present.

15. Contrary to the claims now made by Messrs. Vogel and Boklan relative to the criminal investigation that had been commenced in the Spring of 1975, it is believed that they welcomed the settlement and when they executed the Settlement Agreement in July 1975, they believed it would show that they were seeking to make restitution to the alleged victims of their alleged criminal activities. Now that they are no longer performing under the Settlement Agreement they wish to set it aside on the pretext of coercion alleged to have occurred in 1974.

REPLY AFFIDAVIT OF BERNARD S. KANTON TO THE ANSWERING AFFIDAVITS OF VOGEL AND BOKLAN

16. Defendants would have this Court believe that although represented by one of the leading law firms in the country, Rogers & Wells, that that said law firm permitted these defendants to be coerced into signing this or any Agreement. Defendant Vogel even concedes in his answering affidavit that he "had numerous meetings with my attorneys to discuss the negotiations as they progressed."

17. Thus, it appears that the contentions of defendants Vogel and Boklan, having executed the Settlement Agreement some ten months ago, and having performed thereunder until December 1975, are without substance and merit and their affidavits must be characterized as totally specious. Further, I am advised that this type of claim cannot be made in this proceeding but must be raised by an independent action.

18. It is submitted that the affidavits of Messrs. Boklan and Vogel are interposed solely for the purposes of delay to impede the provisions of a Settlement Agreement negotiated over a period of many months, at arms-length, and with all parties represented by counsel. Under the provisions of the Settlement Agreement, this Court in directing the entry of judgment may further direct the recovery of attorneys' fees, (Section 18.3 of the Settlement Agreement).

REPLY AFFIDAVIT OF BERNARD S. KANTON TO THE ANSWERING AFFIDAVITS OF VOGEL AND BOKLAN

WHEREFORE, your deponent respectfully prays for the entry of judgment as prayed for in the Notices of Motion, and for an award to the plaintiffs of attorneys' fees as to be determined by the Court.

S/ Bernard S. Kanton
BERNARD S. KANTON

Sworn to before me this
5th day of May, 1976

S/ Sally Williams
60-2693850

EXHIBIT 1, ANNEXED TO REPLY AFFIDAVIT OF BERNARD S. KANTON.

NICKERSON, KRAMER, LOWENSTEIN, NESSEN, KAMIN & SOLL
919 THIRD AVENUE
NEW YORK, N. Y. 10022
(212) 688-1100

CABLE ADDRESS
NICKRAL
TWX NUMBER
710 581-5340

October 7, 1975

Honorable Edward R. Neaher
United States District Judge
Eastern District of New York
United States Courthouse - Room 252
Brooklyn, New York 11201

Re: Neimand, et al. v. Mendon Properties, et al., 74 Civ. 970 (EN)

Dear Judge Neaher:

You will recall that we visited with you in late June to report on the progress of the settlement of this litigation and to explain to you the continuing role of the Court under the rather complex settlement agreement among the parties.

The settlement agreement was signed not long after we met with you and I am pleased to report that the closing of the settlement was effected yesterday. Upon the closing the litigation was discontinued against four of the many defendants but, as the settlement agreement provides, it remains pending against the principal defendants as well as a number of corporations.

The settlement provides for the payment of moneys and the performance of various acts by certain of the defendants during the next two years. If all goes well, there should be no occasion for any action by the

EXHIBIT 1, ANNEXED TO REPLY AFFIDAVIT OF BERNARD S. KANTON

Court during this period and, hopefully, the litigation will be discontinued against the remaining defendants no later than early October, 1977.

Respectfully,

Geoffrey M. Kalmus

GMK:bdh

Ccs.: all counsel

EXHIBIT 2, ANNEXED TO REPLY AFFIDAVIT OF BERNARD S. KANTON.

LONG ISLAND PRESS, TUESDAY, MARCH 2, 1976

# 3 Llers charged with land fraud

Three Long Island professional men have been accused of bilking investors in a New Jersey land-development scheme of more than $1 million.

Dr. Eugene Rodin, 63, of Old House Lane, Sands Point; Kenneth E. Boklan, 44, and attorney, Of One, The Commons, Cold Spring Harbor and Seymour Vogel, 44, a real estate dealer, of 577 Green Place, Woodmere, pleaded innocent to grand larceny charges in arraignment yesterday.

Nassau County Court Judge Henderson Morrison released the defendants without bail pending trial.

Nassau Dist.. Atty. Denis Dillon said the indictment followed a year long investigation by his commercial frauds bureau.

Dillon said 26 victims, one of whom put up $265,000, were overcharged $1,233,000 in the $6,121,303 land deal involving New Jersey farmland.

According to the district attorney, investors were told the land cost a specific amount of money, when actually the land was cheaper and the money above the actual purchase price went to the promoters.

In order to conceal the true cost of the land from the investors, Dillon said, the promoters drew up phony purchase money mortgages and false closing statements which made it appear they were making substantial investments themsleves when, in fact, they were not.

Rodin, Boklan and Vogel are charged with 24 counts of second-degree grand larceny in connection with three farm lots comprising 481 acres in Camden County in southern New Jersey.

A second indictment accuses Rodin and Boklan with 25 counts of second-degree grand larceny involving five lots comprising 936 acres in Warren County in northern New Jersey.

Dillon said the speculative scheme began in 1971 with the promise of purchase of the land for future development. He said there has been no development of the land to date.

Second-degree grand larceny is punishable by a maximum sentence of seven years in prison.

EXHIBIT 2, ANNEXED TO REPLY AFFIDAVIT OF BERNARD S. KANTON

NEWSDAY 3/2/76

# 3 Accused of Operating Land Swindle in N.J.

Mineola—A doctor, a lawyer and a real estate broker were accused yesterday of operating a New Jersey land swindle that bilked investors of $1,233,000.

Nassau County District Attorney Denis Dillon identified the suspects as Eugene Rodin, 63, a physician, of Old House Lane, Sands Point; Kenneth Boklan, 44, an attorney of 1 The Commons, Cold Spring Harbor, and Seymour Vogel, 44, of 577 Green Pl., Woodmere.

The three were charged with 24 counts of second-degree grand larceny involving investments in 481 acres of farmland in Camden County, N.J. A second indictment accused Rodin and Boklan of 25 counts of second-degree grand larceny involving investments in 936 acres of land in Warren County, N.J.

According to Dillon, beginning in 1971, 26 investors put up $6,121,000 to purchase for future development land that was valued at $4,888,000. The indictment charges that the defendants concealed the true cost of the land by showing the investors false mortgages and closing statements. It said the defendants made it appear they had a substantial interest in the land themselves, when they had actually invested nothing. They kept the difference between the actual price and the inflated price, according to Dillon.

Investors had anticipated returns on their money when the land was developed, but Dillon said it still is undeveloped. The three pleaded innocent in Nassau County Court before Judge Henderson Morrison, who released them without bail to await trial.

EXHIBIT 2, ANNEXED TO REPLY AFFIDAVIT OF BERNARD S. KANTON

THE NEW YORK TIMES, TUESDAY, MARCH 2, 1976

# Metropolitan Briefs

## 3 Indicted in Real Estate Fraud

Three Long Island men were indicted by a Nassau County grand jury on multiple counts of second-degree larceny for allegedly swindling 26 real estate investors out of $1.233 million by misrepresenting the price of 1,417 acres of rural farmland in Warren and Camden Counties in New Jersey. The defendants pleaded not guilty at arraignment and were released without bail, pending trial. They were identified as Dr. Eugene Rodin, a 63-year-old physician, of Sands Point; Kenneth E. Boklan, 44, a lawyer, of Cold Spring Harbor, and Seymour Vogel, 44, a real estate broker, of Woodmere.

EXHIBIT 3, ANNEXED TO REPLY AFFIDAVIT OF BERNARD S. KANTON.

# MD Admits Swindle

Mineola—A Sands Point doctor, accused of taking part in a $1.2 million New Jersey land swindle, pleaded guilty yesterday to a grand larceny charge for which he could go to jail for four years.

Dr. Eugene Rodin, 63, a physician who lives on Old House Lane, was indicted earlier this month with a Long Island attorney and a real estate broker for allegedly bilking 26 investors. Rodin is to be sentenced in Nassau County Court by Judge Henderson Morrison on April 15. The two other defendants are awaiting trial.

According to the original indictment, the defendants purchased land in New Jersey for future development at a cost of $4,888,000 but told the investors they had paid $6,121,000 for it and kept the difference. They also made it appear that they had a substantial investment in the land themselves, although they had actually invested no money, the indictment said.

(3)

EXHIBIT 4, ANNEXED TO AFFIDAVIT OF BERNARD S. KANTON.

THE OFFICE OF THE DISTRICT ATTORNEY
OF
NASSAU COUNTY
262 Old Country Road
Mineola, New York 11501
Telephone (516)535-4800

July 14, 1975

Miss Catherine M. Vanderwaag
62 Robbins Drive
East Williston, New York 11596

Re; CF 144-75

Dear Madam:

In connection with an investigation being conducted by this office you are requested to appear before the undersigned on July 25, 1975 at 3:00 P.M.

Please bring with you your original cancelled checks indicating your investment of $15,000.00 in joint ventures with Eugene Rodin and Seymour Vogel.

Should you have any questions please telephone Detective Investigator A. J. Cotton at 516-535-3341.

Very truly yours

DENIS DILLON
District Attorney

BENEDICT A. SCHIRALDI
Assistant District Attorney
Commercial Frauds Bureau

BAS:aer

EXHIBIT 5 ANNEXED TO REPLY AFFIDAVIT OF BERNARD S. KANTON.

NICKERSON, KRAMER, LOWENSTEIN, NESSEN, KAMIN & SOLL
919 THIRD AVENUE
NEW YORK, N.Y. 10022
(212) 688-1100

STEVEN T. ATKINS
MARTIN BALSAM
HARVEY BRECHER
CHARLOTTE M. FISCHMAN
HARVEY L. FREEDMAN
ROBERT M. HELLER
STEPHEN A. HOCHMAN
SEYMOUR HOZORE
GEOFFREY M. KALMUS
SHERWIN KAMIN
PETER S. KOLEVZON
MICHAEL PAUL KOROTKIN
ARTHUR B. KRAMER
LOUIS LOWENSTEIN
MICHAEL J. NASSAU
MICHAEL S. NELSON
MAURICE N. NESSEN
EUGENE H. NICKERSON
THOMAS P. PEACOCK
GEORGE SOLL
RICHARD S. WEISBROAT

HERMAN N. FINKELSTEIN
COUNSEL

CABLE ADDRESS
NICKRAL

TWX NUMBER
710 581 5340

July 31, 1975

Richard B. Dannenberg, Esq.
Lipper, Lowey & Dannenberg
747 Third Avenue
New York, N. Y. 10017

Dear Dick:

I thought I would confirm in writing that there was delivered to you at your office on Monday, July 28, 1975, at the meeting at which you, Bernard Kanton, Esq., Geoffrey Kalmus and I were present, the following material:

1. A copy of the Purchase Agreement dated July 17, 1975, signed by Dr. Eugene Rodin and Messrs. Seymour Vogel, Bruce Rodin and Kenneth E. Boklan, as well as by the ten corporations listed on the second page. (I am enclosing 12 extra copies of the Purchase Agreement for you.)

2. A copy of the agreement among the attorneys, dated July 17, 1975, respecting Schedules D, H, I, K and M, which were deemed annexed to the Purchase Agreement.

3. Two copies of the Yaphank Agreement, dated July 17, 1975, executed by Dr. Rodin and Mr. Vogel, and joined in by Kenneth E. Boklan, Drummond Properties, Inc. and All Points Management Corp.

4. Two copies of the Shirley Agreement, dated July 17, 1975, executed by Dr. Rodin and joined in by Messrs. Vogel and Boklan and Bryden-Crowell Properties, Inc.

EXHIBIT 5, ANNEXED TO REPLY AFFIDAVIT OF BERNARD S. KANTON

5. Two copies of the Westhampton Agreement, dated July 17, 1975, executed by Dr. Rodin and Mr. Vogel and joined in by Kenneth E. Boklan.

6. A letter dated July 28, 1975, from our firm (signed by me) to your firm regarding the Front Money Contributions to be made by Dr. Rodin.

7. A letter dated July 28, 1975, from our firm (signed by me) to your firm regarding the fact that our firm had received certified funds from Dr. Rodin and Mr. Vogel.

8. Xerox copies of checks delivered to our firm by Messrs. Vogel and Boklan totaling $99,278.69.

9. Xerox copy of a check from Dr. Rodin to our firm for $179,669.49.

There were other documents that you (or Bernard Kanton) and we exchanged, to wit:

(a) A letter from you to our firm, dated July 28, 1975, regarding the commencement of the 45 day period.

(b) A letter dated July 28, 1975, from Bernard Kanton to our firm delivering the Westhampton, Shirley and Yaphank Agreements.

(c) An agreement between our firm and Bernard Kanton regarding the General Releases of William Birnbaum.

Sincerely,

George Soll

GS/b

EXHIBIT 6, ANNEXED TO REPLY AFFIDAVIT OF BERNARD S. KANTON.

Eugene Rodin
*Old House Lane*
Sands Point, N. Y. 11050

516-883-7226

July 21, 1975

To: Participants in joint ventures owning parcels of real estate located in South Jersey of approximately 109, 150 and 220 acres and in North Jersey of approximately 102, 158, 196, 231 and 250 acres

I write to furnish to each of you certain documents and information concerning the settlement of a lawsuit affecting your interests in the joint ventures owning a number of parcels of real estate in New Jersey. I ask that you read the enclosures that accompany this letter with care.

As you probably recall, in 1971 and 1972 three joint ventures were established, each of which thereupon purchased and now owns a property in South Jersey; Sy Vogel and I are participants in each of these joint ventures, along with a number of you. In 1972 five additional ventures were formed, each of which purchased and now owns a property in North Jersey; my son Bruce and I own interests in each of these ventures, together with others of you.

In mid-1974 about a dozen of the participants in the joint ventures owning the eight properties commenced a lawsuit (the "Litigation") against Bruce, Vogel, Ken Boklan (the attorney who performed the legal work associated with the establishment of the ventures and the acquisition of the properties, as well as subsequent administrative tasks), me, and a number of other individuals and entities, charging, in substance, that the defendants had engaged in wrongful conduct in connection with the formation and management of the joint ventures and the properties owned by them. The plaintiffs' complaint sought, among other things, rescission of the joint venture agreements and the return to the participants in the ventures, other than the defendants, of all of the money that they had invested. A copy of the complaint, as amended early in 1975,

EXHIBIT 6, ANNEXED TO REPLY AFFIDAVIT OF BERNARD S. KANTON

is enclosed; in it you will find a detailed statement of the plaintiffs' claims. The defendants, I hardly need add, deny the truth of a great many of the allegations of the complaint. The court in which the Litigation is pending has not to date passed upon any of the issues.

Even prior to the filing of the lawsuit, efforts were made to settle the controversy. These settlement discussions have continued, with only brief interruptions, throughout the year that the Litigation has been pending. The talks have at last borne fruit and the detailed terms of an acceptable settlement have been embodied in a lengthy agreement. A copy of this agreement (the "Purchase Agreement"), together with the schedules to it, is enclosed. The original of it has already been signed by me, as well as by the other defendants in the Litigation who are parties to it.

In general, the Purchase Agreement provides for the purchase by Vogel and me of the interests of those participants in the ventures owning South Jersey properties who wish to withdraw therefrom. In like fashion, I alone have agreed to purchase the interests of venturers in the North Jersey ventures who wish to withdraw from them. In the Purchase Agreement those who elect to sell their interests to Vogel and me, or to me alone, as the case may be, are called "Sellers," and I will use that term here.

The Purchase Agreement provides for the payment of the purchase price to each Seller, by specified dates in 1977, regardless of whether or not the properties owned by the ventures have been sold by that time. Broadly speaking, the purchase price to be paid each Seller is to equal the amount initially invested by him, plus the mortgage interest and amortization, real estate taxes, and other incidental carrying costs that he has paid, plus interest upon his money.

Under the Purchase Agreement election to become a Seller is voluntary and the option to become a Seller extends not only to those who are plaintiffs in the Litigation, but to all participants in the joint ventures other than Vogel, my son and me. That is to say, each of you may choose to sign the Purchase Agreement and thereby become a Seller, if you wish. In this connection, I should add that I understand that the attorneys for the plaintiffs in the Litigation expect that all, or nearly all, of their clients, who, in the aggregate, own a majority in interest in each of the joint ventures, excluding the interests of Vogel, my son and me, will sign the Purchase Agreement and thereby become Sellers.

EXHIBIT 6, ANNEXED TO REPLY AFFIDAVIT OF BERNARD S. KANTON

There is also enclosed a new agreement to govern the rights and obligations of those participants in the joint ventures who do not elect to become Sellers under the Purchase Agreement, but, rather, prefer to remain in the ventures, along with Vogel and me, as to the South Jersey properties, and my son and me, as to the North Jersey properties. In general, this agreement (the "Agreement among the Remaining Venturers") provides for the continuance of each joint venture until the property owned by it is sold and for the sharing of the profits or losses associated with the venture by those remaining in it in proportion to their interests. Since Vogel and I together, or I alone, will be acquiring the interests of those who elect to become Sellers, in all likelihood we (or I alone) will hereafter own a majority in interest of each joint venture and may own 100% of some of the ventures.

Out of caution I add this thought: If you elect to become a party to the Agreement among the Remaining Venturers, there is no assurance that you will realize a profit upon your investment.

Because the Purchase Agreement alters the rights of all participants in each of the joint ventures, whether or not they elect to become Sellers, it provides, and its effectiveness is conditioned upon each of you signing and becoming a party either to the Purchase Agreement or to the Agreement among the Remaining Venturers. That is to say, you may choose either to become a Seller under the Purchase Agreement or to continue as a "Remaining Venturer" under the Agreement among the Remaining Venturers, but not both. Before deciding whether to become a Seller or a Remaining Venturer, I urge that you read both agreements carefully and suggest that you consult your attorney, if that would be helpful to you in making an informed decision.

You or your attorney may also speak with my attorneys, the attorneys for Vogel and Boklan, or the attorneys for the plaintiffs in the Litigation about the agreements. The names and addresses of the attorneys for all of the parties are set forth in section 24.2 of the Purchase Agreement. Their telephone numbers in New York City are: Mr. Dannenberg, one of the plaintiffs' attorneys, 212 759-1504; Mr. Larsen, one of the attorneys for Vogel and Boklan, 212 972-7203; Mr. Kalmus, one of my attorneys, 212 688-1100.

Both the Purchase Agreement and the Agreement among the Remaining Venturers contemplate a closing near

the end of August and one agreement or the other should be executed and returned by every participant in each joint venture prior to that time. Hence, I ask that you give this matter your prompt attention and that you sign one or the other of the agreements and forward the signed copy to my attorneys, Nickerson, Kramer, Lowenstein, Nessen, Kamin & Soll, Esqs. (Attn. Mr. Kalmus), 919 Third Avenue New York, N. Y. 10022, within the next forty-five days. For your convenience in forwarding the signed Purchase Agreement or Agreement among the Remaining Venturers, an envelope addressed to my attorneys is enclosed.

If you elect to become a Seller, you should

(1) sign the Purchase Agreement under the statement "Additional Sellers should sign immediately below" on page 99 thereof,

(2) complete and sign the enclosed Notice to become an Additional Seller,

(3) sign the enclosed Assignment of Joint Venture Interests and have your signature notarized, and

(4) sign each of the three enclosed general releases and have your signatures notarized.

All of these instruments should be forwarded to my attorneys in the envelope provided. My attorneys will deliver the releases to Mr. Dannenberg, one of the plaintiffs' attorneys, to hold in accordance with the provisions of section 12.3 of the Purchase Agreement. If you choose to become a Seller, I am advised by my attorneys that the plaintiffs may seek to have you contribute your pro rata share of the fees and disbursements of the plaintiffs' attorneys with respect to their services in the Litigation and in negotiation of the various agreements. Your pro rata share would be based on the initial cash contributions made by you to the joint ventures in which you participated compared to the initial cash contributions made by all the other Sellers to all of the joint ventures.

If you choose to continue in the joint ventures in which you have been a participant, you should sign the Agreement among the Remaining Venturers under the statement "Remaining Venturers should sign immediately below" on page 27 thereof and forward the same to my attorneys in the envelope provided together with a check in the aggregate amount, if any, of the "qualifying payments" due from you on account of your share of carrying charges for 1974 which have not been paid. The qualifying payments due

EXHIBIT 6, ANNEXED TO REPLY AFFIDAVIT OF BERNARD S. KANTON

from each joint venturer are shown in column (e) of the multi-page Schedule C to the Purchase Agreement; the amount applicable to you ( ) is $ . Your check should be made payable to my attorneys and will, of course, be utilized in connection with the payment of carrying charges on the properties owned by the joint ventures in which you have been a participant.

Following the closing my attorneys will send you a conformed copy of the agreement that you elect to sign bearing copies of the signatures of all of those who are parties to it and, if you elect to become a Seller, you will also receive any amount to which you may be entitled in accordance with Schedule J to the Purchase Agreement.

Sincerely,

Eugene Rodin

Eugene Rodin

EXHIBIT 7, ANNEXED TO REPLY AFFIDAVIT OF BERNARD S. KANTON.

LIPPER, LOWEY & DANNENBERG
747 THIRD AVENUE
NEW YORK, N. Y. 10017
ATTORNEYS AT LAW
212 759 1564

October 10, 1974

Honorable Edward Neaher
United States District Court
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Niemand v. Mendon Properties, Inc., et al.
74 Civ. 970

Dear Judge Neaher:

I write to report to your Honor that the settlement of this case, which Mr. Larsen of Rogers & Wells and I advised the Court on September 16, 1974 had been agreed to between the parties now has become undone.

To summarize briefly, the agreed settlement called inter alia for the return to all class members electing to rescind, of all moneys they invested in various joint venture real estate investments with defendants, plus interest. Other class members who elected to remain in the ventures would have been given a rebate on their purchase price.

The dollar range of the settlement was estimated by the parties to be between $1.5 million and $2.5 million, depending upon the alternatives opted for by class members. Certain defendants committed themselves to put $400,000 in escrow on October 11, 1974, pending a hearing before this Court upon notice to the class under Rule 23, F.R. Civ. Proc., then to add $100,000 in cash immediately in the event of approval of the settlement, and finally to provide the balance of funds needed no later than September 30, 1975. A distribution of the first $500,000 was envisioned upon approval of the settlement, with the remaining obligation to be secured by real estate of a value no less than $3 million plus the parcels involved in the litigation.

The defendants have reneged on their commitment to put $400,000 in escrow by October 11, 1974, and it is pointless to proceed further with the proposed settlement. The

EXHIBIT 7, ANNEXED TO REPLY AFFIDAVIT OF BERNARD S. KANTON

case was commenced on June 28, 1974. Plaintiffs wish to prosecute the case with dispatch and will oppose any applications for extensions of time.

Respectfully yours,

STEPHEN LOWEY

SL/mel

cc: Robert Larsen, Esq.
Bernard Kanton, Esq.

SUR-REPLY AFFIDAVIT OF SEYMOUR VOGEL IN OPPOSITION TO PLAINTIFFS' AND INTERVENORS' MOTION.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - - - - - - -x

KARL M. NEIMAND, et al.,

Plaintiffs, Intervenor-Plaintiffs and Additional Intervenor-Plaintiffs,

-against- 74 Civ. 970 (EN)

MENDON PROPERTIES, INC., et al.,

Defendants.

- - - - - - - - - - - - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK )
: SS.:
COUNTY OF NASSAU )

SEYMOUR VOGEL, being duly sworn, deposes and says:

1. I am one of the defendants in this action. I make this affidavit in reply to the affidavits of BERNARD S. KANTON and RICHARD B. DANNENBERG, both sworn to on May 5, 1976.

2. At the outset I wish to make some basic statements which apply to matters alluded to in both of those affidavits:

(a) I am informed that under the circumstances which exist here, no plenary action is necessary, and the Court may consider on this motion the position I have taken. My attorney will submit to the Court a Memorandum of Law covering this point.

SUR-REPLY AFFIDAVIT OF SEYMOUR VOGEL IN OPPOSITION TO PLAINTIFFS' AND INTERVENORS' MOTION

(b) My opposition to this motion is not for purposes of delay. I am raising my point on this motion because that is the fastest way to get it resolved. Furthermore, I categorically deny that my opposition to this motion to enter judgment is motivated "for purposes of delaying entry of judgments * * *." (KANTON affidavit, paragraph 2) The plaintiffs must certainly agree that there is much validity to the legal position taken by my attorney since, as I am informed, they have not questioned any aspect of his Memorandum of Law submitted to the Court.

(c) Reference is made in both affidavits to my former attorneys, Rogers and Wells, as "leading," "eminent," "sophisticated," etc. I agree with this. However, no one would suggest that they, or any other attorney, are infallible. The fact that they did not raise the point I am raising does not lead to the conclusion that the point does not exist.

KANTON AFFIDAVIT

3. The key statement in this affidavit is the denial in paragraph 2 of the "alleged remarks" attributed to Mr. Kanton in my previous affidavit. Examination of the validity of this denial shows that it is without any substance whatsoever:

(a) There is no specific denial of our meeting on August 22, 1974 at which, as set forth in paragraph 5 (a) of my previous affidavit, "he became very abusive and stated that unless

we agreed to a deal which would be entirely satisfactory to him he would go to the Nassau County District Attorney and press criminal charges against us; that he would file complaints against us with the SEC and the Internal Revenue Service; all of which would tie us up in investigations for a long time and might finally put us all in jail. In the case of Mr. Boklan, who is a member of the New York Bar, he also threatened to make a complaint to the 'Bar Association'."

(b) His general denial is "supported" only by his statement that he has not been in my presence since December 1974 (paragraph 11 of his affidavit). This statement is untrue. In the spring of 1975 I had an accidental meeting with him at East 38th Street and 3rd Avenue in the afternoon. I was driving past that corner when I noticed Mr. Kanton walking. It was raining at the time so I stopped my car and offered him a lift. His immediate reply was, "Who are you - - - - - - - - lately?" I asked him to stop using such language. His reply was, "What's holding up the - - - - - - - - settlement now? You better sign that - - - - - - - - settlement or you'll be in for more trouble than you ever saw before." I said, "O.K. Bernie," got back into my car and drove away.

(c) There is no specific denial of his threats with respect to the District Attorney, SEC, IRS and (as to Mr. Boklan) the Bar Association.

SUR-REPLY AFFIDAVIT OF SEYMOUR VOGEL IN OPPOSITION TO PLAINTIFFS' AND INTERVENORS' MOTION

(d) Clearly, both from his affidavit and Mr. Dannenberg's affidavit, the Nassau County District Attorney began an investigation in the spring of 1975. Neither of them claims to have made the complaint which stimulated that investigation. Both of their affidavits carefully avoid any discussion of the genesis of the investigation.

4. In so far as co-defendants are concerned (KANTON affidavit, paragraphs 3 and 6), each of them is free to do as he sees fit. However, I can say that on May 8, 1976 Dr. Eugene Rodin telephoned me, told me that he understood that I had put in an answer opposing the entry of judgment. I said I had. He then asked why I hadn't told him I was doing this so he could have joined me. I told him that I preferred to act on my own.

5. There is nothing new, relevant or significant in paragraph 9 of Mr. Kanton's affidavit. In paragraph 8 of my affidavit I stated substantially the same thing, without the irrelevant details. However, as to subparagraphs (ii), (iii), (iv) and (v) of this paragraph 9 of Mr. Kanton's affidavit, if Mr. Dannenberg knows the information attributed to him so well, why did he not set it forth in his own affidavit? Why is it presented by Mr. Kanton in the form of a repetition of what Mr. Dannenberg told him?

SUR-REPLY AFFIDAVIT OF SEYMOUR VOGEL IN OPPOSITION TO PLAINTIFFS' AND INTERVENORS' MOTION

6. Paragraphs 12, 13 and 14 of Mr. Kanton's affidavit are totally irrelevant. As for paragraph 15, is it not presumptuous of him to say that "it is believed [by whom and on what basis] that [the defendants] welcomed the settlement * * *."

DANNENBERG AFFIDAVIT

7. My comments on the Dannenberg affidavit will try to avoid comments which have already been made in this affidavit, on the Kanton affidavit.

8. My activities with respect to the Indianapolis collateral and the 220 Property (Dannenberg affidavit, paragraph 3) were undertaken and carried on at a time when I had no knowledge that there was available to me a legal position that could prevent the entry of judgment against me pursuant to the Settlement Agreement. Therefore such activities cannot be regarded as a "ratification" of my liability under the Settlement Agreement. Furthermore, in both situations I had a purely personal motive for my activities:

(a) Even if I had known of this defense my actions to protect the Indianapolis collateral would not have been a "ratification" but would have been to preserve that collateral so that I could ultimately get it back after my defense was upheld.

(b) As for the sale of the 220 Property, here I was working as a broker trying to earn for myself a commission of $130,000.00, as set forth in the last paragraph of the Rider to the Contract, carefully omitted from the Dannenberg affidavit but which reads as follows:

> "The parties hereto agree that SY VOGEL REALTY CO. INC. is the real estate broker that brought about this sale and agree that it shall be entitled to a brokerage commission equal to 10% of the purchase price as finally determined which commission shall be paid by the execution and delivery by purchaser of a separate purchase money mortgage in that amount which shall be deducted from the mortgage to be given to the seller herein."

Indeed, Mr. Dannenberg was so aware that I was earning a commission that in the original form of the contract, under which the sellers pay the commission, he tried to get me to reduce my commission to 5%.

9. As to the first paragraph on page 4 of the Dannenberg affidavit, it is just not true that I sent Mr. Dannenberg the zoning maps to "elicit" his cooperation. I sent them to him solely at his request because he wanted to familiarize himself with them and then send them to brokers and prospective developers whom he knew in the Philadlphia area.

SUR-REPLY AFFIDAVIT OF SEYMOUR VOGEL IN OPPOSITION TO PLAINTIFFS' AND INTERVENORS' MOTION

10. There is no doubt that, as stated on page 6 of the Dannenberg affidavit, there came a time, in about December 1974, after which my attorneys kept me from contacts with the plaintiffs' attorneys. However, this resulted solely from the fact that Mr. Boklan and I found that we could not take the ill-tempered and foul-mouthed abuse and threats to which we were subjected by Mr. Kanton and Mr. Dannenberg. [A good example is in paragraph 2 (b) of this affidavit.] But for this we would have continued to participate in the negotiations.

11. As to the reference to Dr. Rodin in paragraph 5 of the Dannenberg affidavit, I refer the Court to paragraph 4 of this affidavit. As to the reference to Section 18.1 of the Settlement Agreement, clearly it and its limitations fall if the Settlement Agreement falls. This applies also to paragraph 7 of the Dannenberg affidavit.

12. As to paragraph 6 of the Dannenberg affidavit, the judgments in Nassau County total about $70,000.00 and they have not been satisfied.

13. I find it hard to believe that the use of the word "frivolous" in paragraph 7 of the Dannenberg affidavit is seriously intended. If my opposition to the entry of judgment were "frivolous" would the plaintiffs have avoided any rebuttal at all to

our basic legal point? If my opposition were "frivolous" why did it necessitate 20 pages of answering affidavits plus voluminous exhibits, all "buttressed" by a 19 page legal memorandum?

CONCLUSION

14. One important point remains clear - - - the issue of whether threats were made, and when, where and by whom, cannot be disposed of in the plaintiffs' favor on these conflicting affidavits. If my affidavits have not persuaded the Court that I was threatened with criminal prosecution if I did not agree to a settlement satisfactory to the plaintiffs, and that I agreed to such a settlement under the pressure of those threats and in the expectation that no criminal prosecution would then be sought by and on behalf of the plaintiffs, then the Court should resolve these issues by ordering an evidentiary hearing.

Sworn to before me this
11th day of May, 1976

SEYMOUR VOGEL

LEILA SLAVIN
Notary Public, State of New York
No. 30-0040540
Qualified in Nassau County
Commission Expires March 30, 1977

MEMORANDUM AND ORDER BY NEAHER, D. J., GRANTING ENTRY OF JUDGMENT.

NEAHER, District Judge.

This is an action for violation of the securities laws in connection with the acquisition by 45 investors of interests in joint ventures for the development for sale of real estate in New Jersey, formed and managed by defendants. The litigation culminated in a lengthy settlement agreement (the "Agreement") dated July 17, 1975, under which the investors agreed to sell their interests in the joint ventures in return for the amount of their individual capital contributions plus carrying charges paid plus interest (the "Individual Sales Price") to be paid by June or September 1977. Until then certain defendants agreed to pay the carrying charges such as mortgage amortization, interest and real estate taxes (the "Front Money Contributions").

The Agreement also provided for the continuing jurisdiction of this court and for the investors' right to seek the entry of judgment should specified events of default in the performance of the Agreement occur. All 45 investors signed the Agreement. Although not all investors are plaintiffs or intervenors in this action, under the Agreement all signers may seek to intervene as plaintiffs for

purposes of the entry of judgment.

Section 20.1 of the Agreement provides that the litigation shall not be further prosecuted by any investor unless an event of default as defined in §17.1 has occurred and is uncured. Some, but not all, of the investors have now exercised their right to intervene and move for the entry of a separate judgment, under §18.2 of the Agreement, predicated upon the following §17 defaults.

Eugene Rodin and Seymour Vogel, defendants, agreed to pay a sum of $750,000 to the Fiscal Agent in three installments for the Front Money Contributions. They paid the first installment at the time of closing of the Agreement, October 6, 1975, but failed to pay the second installment due April 6, 1976, a default as defined in §17.1(a).

Further defaults are: the failure to pay the Fiscal Agent necessary funds as requested for interim carrying charges, §17.1(b); for interest on the California collateral, §17.1(i); and for payments due under the Indianapolis contract, §17.1(k).

MEMORANDUM AND ORDER BY NEAHER, D. J., GRANTING ENTRY OF JUDGMENT

Although the occurrence of the defaults is not disputed, the consequences are. Three defendants oppose the entry of judgments — Bruce Rodin, Seymour Vogel and Kenneth Boklan. In accordance with the authority of the court under §22.1 to decide disputes under the Agreement in the manner deemed appropriate, and upon consideration of the moving, answering and reply papers, the court rules as follows.

A separate judgment in favor of the applying plaintiffs and intervenors on their claims may be entered herein consistent with the provisions of Rule 54(b), F.R.Civ.P., and the terms of the Agreement. Sections 18.3, 19.1 and 19.2 support plaintiffs' position that the Agreement contemplates the entry of such separate judgment. The court, however, adopts plaintiffs' counsels' statement regarding priorities among the Sellers, interpreting §19.1 of the Agreement:

> "In other words, if there is execution against any of the properties held under the Settlement Agreement by any one judgment creditor, the proceeds from such execution must be held for the benefit of all forty-five investors under the provisions of the Settlement Agreement irrespective of the date each entered judgment." ¶5 of Dannenberg Affidavit of March 10, 1976.

MEMORANDUM AND ORDER BY NEAHER, D. J., GRANTING ENTRY OF JUDGMENT

The motions of Vanderwaag, Virdone and Turkal to intervene as plaintiffs, not opposed by defendants, are also granted.

The extent of Bruce Rodin's liability is determined under §18.2(d) of the Agreement, and therefore the limitations of §18.2(c) do not apply. A default in the payment of Front Money Contributions by Eugene Rodin having occurred, judgment against Bruce Rodin may be entered accordingly. At the same time, however, §19.3, governing execution, also applies.

Bruce Rodin's application for dismissal of the action now that a judgment is to be entered is denied. Sections 18.4, 18.5, 20.1 and 20.3 support the interpretation that the litigation is not to be dismissed until all investors have been paid their Individual Sales Price or judgments have been entered against the appropriate defendants. As to those plaintiffs and intervenors who obtain judgment by virtue of this order, the action will be dismissed.

Defendants Boklan's and Vogel's claims that the contract is unenforceable due to duress in the execution of the Agreement are denied as without merit. Assuming the

alleged threats of criminal prosecution and reporting to the bar association are sufficient to constitute duress, the papers reveal that the "threats" were effected and the investigations, of which defendants had knowledge, were commenced before the Agreement was executed and closed. It is inconceivable that defendants signed the Agreement hoping that the "threats" would not come to pass. Defendants also performed or attempted to perform the Agreement and may be said to have ratified it. The contract is enforceable against them.

Plaintiffs' attorneys have requested the award of attorneys' fees, as provided in §18.3(v) for the expense in replying to the opposition of defendants' Bruce Rodin, Boklan and Vogel to the entry of judgment. The application for an award of $750 against Bruce Rodin is denied. The application for an award of $2,480 jointly and severally against defendants Boklan and Vogel is granted on the grounds that their opposition was frivolous and solely for purposes of delay. The applicants finally apply for costs which the court may, as provided in §18.3(iv), include in the separate judgment. The application is granted.

MEMORANDUM AND ORDER BY NEAHER, D. J., GRANTING ENTRY OF JUDGMENT

Accordingly, the applications to intervene and for entry of separate judgment are granted. A form of judgment in conformity with the above rulings shall be submitted on notice to all other parties.

SO ORDERED.

/s/ EDWARD R. NEAHER
U. S. D. J.

Dated: Brooklyn, New York
June 7, 1976

FINAL JUDGMENT AND ORDER AGAINST DEFENDANTS.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---

KARL M. NEIMAND, SYDNEY JARKOW, ARTHUR A. INGRAM, SIDNEY MISHCON, MORRIS GUDWIN and EDWARD A. PALLACK,

Plaintiffs,

-and-

GEORGE COOPER, LEONARD MILTON, DOROTHY LEVESS, BERNARD S. KANTON, VAN BAALEN HEILBRUN & CO., INC., EMPLOYEES PROFIT SHARING PLAN AND TRUST, MORTIMER EHRMAN, WILLIAM EHRMAN, SAMUEL EHRMAN, RICHARD EHRMAN, JACK ORLOFF, ALEXANDER DAVIS, DAVID HERSHBERG and MELVIN HIRSCHBERG,

Plaintiff-Intervenors,

-and-

GEORGE SCHWARTZ, MATTHEW STEIN, ABRAHAM GOLDFARB, EUGENE COHN, MAE COHN and MARGARET COHN,

Additional Plaintiff-Intervenors,

-against-

MENDON PROPERTIES, INC., PARKHAM DEVELOPMENT CORP., SEYMOUR VOGEL, KENNETH E. BOKLAN, EUGENE RODIN, BRUCE RODIN, SY VOGEL ASSOCIATES, RILLSTONE PROPERTIES, INC., GODSBERG REALTY CORP., BYERLY PROPERTIES, INC., GROUP ADMINISTRATORS CORP., TAMERLANE PROPERTIES, INC., HARTWICK PROPERTIES, INC., COLE-HUNT DEVELOPMENT CORPORATION and BERVO ASSOCIATES, INC.,

Defendants.

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FILED IN CLERK'S OFFICE U.S.D.C. E.D.N.Y. JUNE 28, 1976

74 Civ. 970 (EN)

FINAL JUDGMENT AND ORDER

Rule 54(b) F.R.Civ.P.

FINAL JUDGMENT AND ORDER AGAINST DEFENDANTS

A. In this action for violation of the securities laws in connection with the acquisition by 45 investors of interests in joint ventures for the development for sale of real estate in New Jersey, formed and managed by defendants, certain of the investors have moved for the enforcement of a settlement agreement dated July 17, 1975, (the "Agreement") and for the entry of separate judgments against the defendants in accordance with the provisions of the Agreement.

B. Certain of the defendants opposed the entry of judgments, to wit Bruce Rodin; Seymour Vogel; Kenneth Boklan; Mendon Properties, Inc.; Byerly Properties, Inc; Tamerlane Properties, Inc.; Parkham Development Corp.; Group Administrators Corp.; Cole-Hunt Development Corp.; Hartwick Properties Corp. and Sy Vogel Associates.

C. By Order dated June 7, 1976, (annexed hereto as Exhibit 1) the Court, after due consideration upon the moving, answering and reply papers, made certain rulings with respect to the Agreement, in accordance with the authority of the Court under Section 22.1 of the Agreement to decide disputes thereunder in the manner "he deems appropriate".

D. This Court expressly determined that there is no just reason for delay and expressly directed the entry of separate judgments, upon settlement of a form of judgment in conformity with the Court's rulings.

FINAL JUDGMENT AND ORDER AGAINST DEFENDANTS

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The applications to intervene as plaintiffs, for purposes of the entry of judgment, of Catherine M. Vanderwaag, and Dolores T. Virdone and of Harris Turkel are granted.

2. The applications for the entry of separate judgments on behalf of plaintiffs and plaintiff-intervenors Karl M. Neimand, Arthur A. Ingram and Bernard S. Kanton, dated April 8, 1976; on behalf of Mortimer H. Ehrman, Richard K. Ehrman, Samuel K. Ehrman and William A. Ehrman, dated April 12, 1976; and on behalf of Catherine M. Vanderwaag, Dolores T. Virdone and of Harris Turkel are granted.

3. There is no just reason for delay in the entry of final separate judgments on behalf of each of the foregoing plaintiffs and plaintiff-intervenors, and ~~the Clerk of the Court~~ judgment is directed ~~to enter judgment~~ forthwith in accordance with paragraphs 4 and 5 hereof.

4. Each of the following plaintiffs and plaintiff-intervenors shall recover of the respective defendants, as indicated, jointly and severally, the sums hereinafter set forth (which include interest computed to July 1, 1976 in accordance with the provisions of the Agreement), together with the costs of the action.

FINAL JUDGMENT AND ORDER AGAINST DEFENDANTS

| | Plaintiffs and Plaintiff-Intervenors | Defendants Against Whom Judgment is Recovered | Amount of Judgment (including interest to July 1, 1976) |
|---|---|---|---|
| 1. | Karl M. Neimand<br>32 Shore Cliff Terrace<br>Great Neck, N.Y. 11023 | Eugene Rodin<br>Old House Lane<br>Sands Point, N.Y. | $456,374.08 |
| | " | Bruce Rodin<br>15 West 75th Street<br>New York, N.Y. 10023 | 456,374.08 |
| | " | Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 172,289.41 |
| | " | Sy Vogel Associates<br>577 Green Place<br>Woodmere, N.Y. | 172,289.41 |
| | " | Kenneth E. Boklan<br>One The Commons<br>Cold Spring Harbor, N.Y. | 172,289.41 |
| | " | Godsberg Realty Corp.<br>c/o Eugene Rodin<br>Old House Lane<br>Sands Point, N.Y. | 19,624.13 |
| | " | Rillstone Properties, Inc.<br>c/o Eugene Rodin<br>Old House Lane<br>Sands Point, N.Y. | 165,500.13 |
| | " | Mendon Properties, Inc.<br>c/o Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 162,280.02 |
| | Karl M. Neimand<br>32 Shore Cliff Terrace<br>Great Neck, N.Y. 11023 | Group Administrators Corp.<br>c/o Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | $172,289.41 |
| | " | Hartwick Properties, Inc.<br>c/o Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 172,289.41 |

FINAL JUDGMENT AND ORDER AGAINST DEFENDANTS

| | | | |
|---|---|---|---|
| 2. | Arthur A. Ingram<br>51 Arbor Road<br>East Hills, N.Y. | Eugene Rodin<br>Old House Lane<br>Sands Point, N.Y. | 137,262.46 |
| | " | Bruce Rodin<br>15 West 75th Street<br>New York, N.Y. 10023 | 137,262.46 |
| | " | Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 46,164.85 |
| | " | Sy Vogel Associates<br>577 Green Place<br>Woodmere, N.Y. | 46,164.85 |
| | " | Kenneth E. Boklan<br>One The Commons<br>Cold Spring Harbor, N.Y. | 46,164.85 |
| | " | Godsberg Realty Corp.<br>c/o Eugene Rodin<br>Old House Lane<br>Sands Point, N.Y. | 49,061.00 |
| | " | Pillstone Properties,Inc.<br>c/o Eugene Rodin<br>Old House Lane<br>Sands Point, N.Y. | 70,351.69 |
| | " | Mendon Properties,Inc.<br>c/o Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 66,910.77 |
| | " | Tamerlane Properties,Inc.<br>c/o Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 46,164.85 |
| | " | Bervo Associates, Inc.<br>c/o Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 46,164.85 |
| | " | Byerly Properties, Inc.<br>c/o Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 46,164.85 |

FINAL JUDGMENT AND ORDER AGAINST DEFENDANTS

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|---|---|---|---|
| 3. | Bernard S. Kanton<br>Pheasant Hill Lane<br>Old Brookville, N.Y. | Eugene Rodin<br>Old House Lane<br>Sands Point, N.Y. | $256,907.24 |
| | " | Bruce Rodin<br>15 West 75th Street<br>New York, N.Y. 10023 | 259,907.24 |
| | " | Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 259,907.24 |
| | " | Sy Vogel Associates<br>577 Green Place<br>Woodmere, N.Y. | 259,907.24 |
| | " | Kenneth E. Boklan<br>One The Commons<br>Cold Spring Harbor, N.Y. | 259,907.24 |
| | " | Group Administrators Corp.<br>c/o Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 127,412.83 |
| | " | Hartwick Properties, Inc.<br>c/o Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 127,412.83 |
| | " | Tamerlane Properties,Inc.<br>c/o Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 129,494.41 |
| | " | Bervo Associates, Inc.<br>c/o Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 129,494.41 |
| | " | Byerly Properties, Inc.<br>c/o Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 129,494.41 |
| 4. | Mortimer Ehrman<br>3590 South Ocean Blvd.<br>Palm Beach, Florida | Eugene Rodin<br>Old House Lane<br>Sands Point, N.Y. | 24,517.69 |
| | " | Bruce Rodin<br>15 West 75th Street<br>New York, N.Y. 10023 | 24,517.69 |

FINAL JUDGMENT AND ORDER AGAINST DEFENDANTS

| | | | |
|---|---|---|---|
| | Mortimer Ehrman<br>3590 South Ocean Blvd.<br>Palm Beach, Florida | Seymour Vogel<br>577 Green Place<br>Woodmere,N.Y. | $24,517.69 |
| | " | Sy Vogel Associates<br>577 Green Place<br>Woodmere, N.Y. | 24,517.69 |
| | " | Kenneth E. Boklan<br>One The Commons<br>Cold Spring Harbor, N.Y. | 24,517.69 |
| | " | Parkham Development Corp.<br>c/o Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 24,517.69 |
| 5. | Richard Ehrman<br>23440 Civic Center Way<br>Suite 104<br>Malibu, Calif. 90265 | Eugene Rodin<br>Old House Lane<br>Sands Point, N.Y. | 23,201.14 |
| | " | Bruce Rodin<br>15 West 75th Street<br>New York, N.Y. 10023 | 23,201.14 |
| | " | Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 10,966.43 |
| | " | Sy Vogel Associates<br>577 Green Place<br>Woodmere, N.Y. | 10,966.43 |
| | " | Kenneth E. Boklan<br>One The Commons<br>Cold Spring Harbor, N.Y. | 10,966.43 |
| | " | Parkham Development Corp.<br>c/o Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 10,966.43 |
| | " | Mendon Properties, Inc.<br>c/o Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 12,234.71 |
| | " | Rillstone Properties, Inc.<br>c/o Eugene Rodin<br>Old House Lane<br>Sands Point, N.Y. | 12,234.71 |

FINAL JUDGMENT AND ORDER AGAINST DEFENDANTS

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|---|---|---|---|
| 6. | Samuel Ehrman<br>52 Lyncrest Drive<br>Monsey, N.Y. | Eugene Rodin<br>Old House Lane<br>Sands Point, N.Y. | $23,778.11 |
| | " | Bruce Rodin<br>Old House Lane<br>Sands Point, N.Y. | 23,778.11 |
| | " | Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 13,291.07 |
| | " | Sy Vogel Associates<br>577 Green Place<br>Woodmere, N.Y. | 13,291.07 |
| | " | Kenneth E. Boklan<br>One The Commons<br>Cold Spring Harbor, N.Y. | 13,291.07 |
| | " | Parkham Development Corp.<br>c/o Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 13,291.07 |
| | " | Mendon Properties, Inc.<br>c/o Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 23,778.11 |
| | " | Rillstone Properties, Inc.<br>c/o Eugene Rodin<br>Old House Lane<br>Sands Point, N.Y. | 23,778.11 |
| 7. | William Ehrman<br>444 East 82nd Street<br>New York, N.Y. | Eugene Rodin<br>Old House Lane<br>Sands Point, N.Y. | 24,648.25 |
| | " | Bruce Rodin<br>Old House Lane<br>Sands Point, N.Y. | 24,648.25 |
| | " | Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 12,413.54 |
| | " | Sy Vogel Associates<br>577 Green Place<br>Woodmere, N.Y. | 12,413.54 |

FINAL JUDGMENT AND ORDER AGAINST DEFENDANTS

| | | | |
|---|---|---|---|
| | " | Kenneth E. Boklan<br>One The Commons<br>Cold Spring Harbor, N.Y. | 12,413.54 |
| | William Ehrman<br>444 East 82nd Street<br>New York, N.Y. | Parkham Development Corp.<br>c/o Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | $12,413.54 |
| | " | Mendon Properties, Inc.<br>c/o Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 12,234.71 |
| | " | Rillstone Properties, Inc.<br>c/o Eugene Rodin<br>Old House Lane<br>Sands Point, N.Y. | 12,234.71 |
| 8. | Harris Turkel<br>703 No. Chubb Drive<br>Doylestown, Pa. | Eugene Rodin<br>Old House Lane<br>Sands Point, N.Y. | 14,129.48 |
| | " | Bruce Rodin<br>15 West 75th Street<br>New York, N.Y. 10023 | 14,129.48 |
| | " | Godsberg Realty Corp.<br>c/o Eugene Rodin<br>Old House Lane<br>Sands Point, N.Y. | 14,129.48 |
| | " | Rillstone Properties, Inc.<br>c/o Eugene Rodin<br>Old House Lane<br>Sands Point, N.Y. | 14,129.48 |
| 9. | Catherine M. Vanderwaag<br>62 Robbins Drive<br>East Williston, N.Y. | Eugene Rodin<br>Old House Lane<br>Sands Point, N.Y. | 26,356.33 |
| | " | Bruce Rodin<br>15 West 75th Street<br>New York, N.Y. 10023 | 26,356.33 |
| | " | Mendon Properties, Inc.<br>c/o Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | 26,356.33 |

FINAL JUDGMENT AND ORDER AGAINST DEFENDANTS

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|---|---|---|---|
| 10. | Dolores T. Virdone<br>107 Ninth Street<br>Garden City, N.Y. | Eugene Rodin<br>Old House Lane<br>Sands Point, N.Y. | 42,842.91 |
| | | Bruce Rodin<br>15 West 75th Street<br>New York, N.Y. 10023 | 42,842.91 |
| | Dolores T. Virdone<br>107 Ninth Street<br>Garden City, N.Y. | Mendon Properties, Inc.<br>c/o Seymour Vogel<br>577 Green Place<br>Woodmere, N.Y. | $42,842.91 |

5. The firm of LIPPER, LOWEY & DANNENBERG, 747 Third Avenue, New York, New York, shall recover of the defendant, SEYMOUR VOGEL and of the defendant, KENNETH E. BOKLAN, jointly and severally, the sum of $2,480.00.

Dated: Brooklyn, N.Y.
June 25, 1976

Edward R. Neaher
United States District Judge

NOTICE OF APPEAL, FILED BY DEFENDANTS VOGEL, *ET AL.*

S I R S :

NOTICE is hereby given that the defendants SEYMOUR VOGEL, SY VOGEL ASSOCIATES, MENDON PROPERTIES, INC., BYERLY PROPERTIES, INC., TAMERLANE PROPERTIES, INC., PARKHAM DEVELOPMENT CORP., GROUP ADMINISTRATORS CORP., COLE-HUNT DEVELOPMENT CORPORATION and HARTWICK PROPERTIES, INC. hereby appeal to the United States Court of Appeals for the Second Circuit from the Final Judgment and Order entered in this action on June 28, 1976.

Dated: July 21, 1976

LEON MALMAN
Attorney for Defendants
SEYMOUR VOGEL, SY VOGEL ASSOCIATES, MENDON PROPERTIES, INC., BYERLY PROPERTIES, INC., TAMERLANE PROPERTIES, INC., PARKHAM DEVELOPMENT CORP., GROUP ADMINISTRATORS CORP., COLE-HUNT DEVELOPMENT CORPORATION and HARTWICK PROPERTIES, INC.

TO:

CLERK, UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

LIPPER, LOWEY & DANNENBERG, ESQS.
Attorneys for Plaintiffs and
Plaintiffs-Intervenors
747 Third Avenue
New York, New York 10017

NICKERSON, KRAMER, LOWENSTEIN,
NESSEN, KAMIN & SOLL, ESQS.
Attorneys for Defendants EUGENE RODIN, et al.
919 Third Avenue
New York, New York 10022
212-688-1100

MEYER, ENGLISH & CIANCIULLI, ESQS.
Attorneys for Defendant BRUCE RODIN
160 Mineola Boulevard
Mineola, New York 11501
516-741-6565

DAVID J. DEAN, ESQ.
Attorney for Defendant BOKLAN
1 Old Country Road
Carle Place, New York 11514
516-248-9888

NOTICE OF APPEAL, FILED BY DEFENDANT KENNETH E. BOKLAN.

S I R S:

NOTICE is hereby given that the Defendant, KENNETH E. BOKLAN, hereby appeals to the United States Court of Appeals for the Second Circuit from the Final Judgment and Ordered entered in this action on June 28, 1976.

Dated: Carle Place, New York
July 28, 1976

S/

DEAN and FALANGA, ESQS.
Attorneys for Defendant BOKLAN
Office and P.O. Address
One Old Country Road
Carle Place, New York 11514
248 9888

TO: CLERK, UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

LIPPER, LOWEY & DANNENBERG, ESQS.
Attorneys for Plaintiffs and
Plaintiffs-Intervenors
747 Third Avenue
New York, New York 10017

NICKERSON, KRAMER, LOWENSTEIN,
NESSEN, KAMIN & SOLL, ESQS.
Attorneys for Defendants EUGENE RODIN, et al.
919 Third Avenue
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THE FOLLOWING ARE THE PORTIONS OF THE APPENDIX DESIGNATED BY THE ATTORNEYS FOR THE PLAINTIFFS-APPELLEES.

COMPLAINT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

KARL M. NEIMAND, SYDNEY JARKOW, ARTHUR A. INGRAM, SIDNEY MISHCON, MORRIS GUDWIN, And EDWARD A. PALLACK,

Plaintiffs,

-against-

MENDON PROPERTIES, INC., PARKHAM DEVELOPMENT CORP., SEYMOUR VOGEL, KENNETH E. BOKLAN, EUGENE RODIN, BRUCE RODIN, WILLIAM N. BIRNBAUM, SY VOGEL ASSOCIATES, RILLSTONE PROPERTIES, INC., GODSBERG REALTY CORP., BYERLY PROPERTIES, INC., GROUP ADMINISTRATORS CORP., TAMERLANE PROPERTIES, INC., HARTWICK PROPERTIES, INC., and COLE-HUNT DEVELOPMENT CORPORATION,

Defendants.
----------x

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Amended 2(21)75
10-7-75

COMPLAINT

CLASS ACTION

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Plaintiffs, by their undersigned attorneys, complaining of the defendants, allege upon information and belief, except as to paragraphs 1,2,3,7 and 18 through 27, which are alleged upon knowledge, that:

JURISDICTION AND VENUE

1. This action arises out of violations of Sections 5, 12(1) and 12(2) of the Securities Act of 1933, as amended, 15 U.S.C. §77 e, 1(1) and 1(2) (hereinafter referred to as the "Securities Act"), Section 10(b) of the Securities Exchange Act of

1934, 15 U.S.C. §78j(b) (hereinafter referred to as the"Exchange Act"), Securities and Exchange Commission ("S.E.C.") Rule 10b-5, principles of common law and equity of the State of New York and statutes of the State of New York.

2. The jurisdiction of this Court is founded upon Sections 22(a) of the Securities Act, 15 U.S.C. §77v, Section 27 of the Exchange Act, 15 U.S.C. §78aa, and principles of pendent jurisdiction.

3. Plaintiffs are all citizens of the State of New York residing within the Eastern District of New York.

4. The individual defendants are all citizens of the State of New York residing within the Eastern District of New York.

5. The corporate defendants are all New York corporations, all having the same office within the Eastern District of New York.

6. Many of the acts and transactions constituting or in furtherance of the violations alleged occurred and are occurring within the Eastern District of New York.

## THE PARTIES

7. Plaintiffs are all investors in one or more of the following joint venture investment contracts dealing in land located in the State of New Jersey:

(a) 222.386 acres in Winslow Township, Camden County, New Jersey, with title being acquired as of January 28, 1972. ("the 222 deal").

(b) 196.955 acres in Allamuchy Township, Warren County, New Jersey, with title being acquired as of July 30, 1973. ("the 196 deal").

(c) 231.82 acres in the Township of Frelinghuysen, Warren County, New Jersey, with title being acquired as of November 10, 1972. ("the 231 deal".)

(d) 250 acres in Independence Township, Warren County, New Jersey, with title being acquired as of February 9, 1973. ("the 250 deal").

(e) 158.31 acres in Hope Township, Warren County, New Jersey, with title being acquired as of August 17, 1972. ("the 158 deal").

(f) 101.96 acres of Hope Township, Warren County, New Jersey, with title being acquired as of May 16, 1972. ("the 101 deal").

(g) 150.491 acres in Winslow Township, Camden County, New Jersey, with title acquired as of June 29, 1971. ("the 150 deal").

(h) 109.05 acres in Winslow Township, Camden County, New Jersey, with title acquired as of July 6, 1971. ("the 109 deal").

8. Defendant Seymour Vogel ("Vogel") is a real estate broker licensed in the State of New York; Defendant Sy Vogel Associates ("SVA") is a business name owned and used by Vogel.

9. Defendant Kenneth E. Boklan ("Boklan") is an attorney licensed to practice in the State of New York.

10. Defendant Eugene Rodin ("E. Rodin") is a physician licensed to practice medicine in the State of New York.

11. Defendant Bruce Rodin ("B. Rodin"), son of E. Rodin, is a real estate broker licensed in the State of New York.

12. Defendant William Birnbaum ("Birnbaum") is an attorney licensed to practice law in the State of New York.

13. Defendants Vogel, Boklan, E. Rodin and B. Rodin (hereinafter sometimes collectively referred to as "the promoters") organized, promoted, sold, acquired, managed and continue to manage the eight deals enumerated in paragraph 7 hereof (collectively referred to as "the deals") as will hereinafter be shown.

14. Defendant Birnbaum and other persons have assisted, aided and abetted the promoters in connection with one or more of the deals, as will hereinafter be shown.

15. Defendant Mendon Properties, Inc. ("Mendon") was organized by defendant Boklan. All of its outstanding stock is owned by one or more of the promoters or Birnbaum, and one or more the promoters manages Mendon.

16. Defendant Parkham Development Corp. ("Parkham") was organized by defendant Boklan. All of its outstanding stock is owned by one or more of the promoters or Birnbaum, and one or more of the promoters manages Parkham.

17. The remaining corporate defendants were each organized by defendant Boklan and have their business offices at his law office with the exception of defendants Godsberg Realty Corp. (Godsberg") and Group Administrators Corp. ("Group"). Defendant Group was organized by defendant Birnbaum and has its business office in his law office. All outstanding stock of the corporate defendants is owned by one or more of the promoters or other individual defendants,and one or more of the promoters manages each of the corporate defendants. The corporate defendants have assisted, aided and abetted the promoters in connection with one or more of the deals, as will hereinafter be shown.

## CLASS ACTION ALLEGATIONS

18. Plaintiffs bring Count 1 of this Complaint against the promoters on behalf of themselves and representatively as a class action pursuant to Rule 23(b), (2) and (3) of the Federal Rules of Civil Procedure on behalf of a class consisting of all other persons who invested in one or more of the deals, excluding the defendants.

19. There are approximately forty members of the class, joinder of all of whom as plaintiffs would be impracticable.

20. Plaintiffs Karl M. Neimand ("Neimand") and Sidney Mishcon ("Mishcon") bring Counts 2, 3 and 4 on behalf of themselves and a sub-class consisting of all other persons who invested in the 222 deal excluding defendants.

21. Plaintiffs Neimand and Arthur A. Ingram ("Ingram") bring Counts 5, 6 and 7 on behalf of themselves and a sub-class consisting of all other persons who invested in the 196 deal excluding defendants.

22. Plaintiff Neimand brings Counts 8, 9 and 10 on behalf of himself and a sub-class consisting of all other persons who invested in the 231 deal excluding defendants.

23. Plaintiffs Neimand and Edward A. Pallack ("Pallack") bring Counts 11, 12 and 13 on behalf of themselves and a sub-class consisting of all other persons who invested in the 250 deal excluding defendants.

24. Plaintiffs Neimand and Ingram bring Counts 14, 15 and 16 on behalf of themselves and a sub-class consisting of all other persons who invested in the 158 deal excluding defendants.

25. Plaintiffs Neimand and Pallack bring Counts 17, 18 and 19 on behalf of themselves and a sub-class consisting of all other persons who invested in the 101 deal excluding defendants.

26. Plaintiff Morris Gudwin ("Gudwin") brings Counts 20, 21 and 22 on behalf of himself and a sub-class consisting of all other persons who invested in the 150 deal excluding defendants.

27. Plaintiffs Gudwin, Ingram and Sydney Jarkow ("Jarkow") brings Counts 23, 24 and 25 on behalf of themselves and a sub-class consisting of all other persons who invested in the 109 deal excluding defendants.

28. There are questions of law and fact common to the class and to the various sub-classes, including, without limitation, whether Sections 5, 12(1) and (2) of the Securities Act, Section 10(b) of the Exchange Act, SEC Rule 10(b)-5 and New York law have been violated by the defendants; whether the joint venture investment contracts sold by the promoters to plaintiffs and the class were securities within the meaning of the Securities Act; whether the promoters made untrue statements of material

facts and omitted to disclose material facts to plaintiffs and members of the various sub-classes; whether the promoters, aided and abetted by one or more of the other defendants, employed devices, schemes and artifices to defraud and engaged in acts, practices and a course of conduct calculated to and which did operate as a fraud and deceit upon plaintiffs and members of the various sub-classes in connection with the sale to them of the deals; whether the promoters have deliberately taken for themselves substantial undisclosed profits in the deals, by creating fictitious purchases and sales and fictitious mortgages and by reporting to plaintiffs and class members false and inflated acquisition prices for the land involved in the deals, retaining for themselves excess consideration paid by plaintiffs and class members to them as agents for the purchase of the land involved in the deals; whether the promoters have violated their fiduciary duties to plaintiffs and members of the various sub-classes to manage and operate the deals honestly for the benefit of plaintiffs and members of the various sub-classes.

29. Plaintiffs' claims are typical of those of the class. Each plaintiff seeking to represent a sub-class has a claim typical of those of other members of that sub-class. Plaintiffs will fairly and adequately protect the interests of

the class. Each plaintiff seeking to represent a sub-class will fairly and adequately represent the members of that sub-class. Plaintiffs do not have interests antagonistic to or in conflict with the class. Plaintiffs' attorneys are experienced in actions of this nature and are well qualified to conduct this litigation.

30. Questions of law and fact common to members of the class and the various sub-classes predominate over any questions affecting individual members. A class action is manageable and would be superior to other available methods for the fair and efficient adjudication of this controversy.

31. Plaintiff will undertake to pay for the cost of notifying all members of the class of the pendency of this action in accordance with Rule 23(c) of the Federal Rules of Civil Procedure, in the first instance with said costs to be taxed to defendants if plaintiffs prevail.

## COUNT I

(Under Section 12(1) of the Securities Act on behalf of the class against the promoters).

32. Commencing in 1971 and continuing through 1972 and 1973, the promoters sold certain securities to plaintiffs and the class and offered to sell such securities to others without there being in effect as to

any of the said securities a Registration Statement filed with the SEC, in violation of Section 5 of the Securities Act.

33. The securities involved were 8 joint venture investments contracts, heretofore described in paragraph 7 of this complaint, all of which related to land in New Jersey, and were sold and offered for sale by the promoters within the Eastern District of New York through means and instruments of transportation and communication in interstate commerce and through the mails.

34. Plaintiffs and the class purchased the securities for an aggregate cash consideration in excess of $1,750,000.

35. Plaintiffs hereby tender the securities purchased back to the promoters on their own behalf and on behalf of all class members and demand return of the consideration paid for the securities, and all money paid for real estate, taxes, closing costs, attorneys fees and other charges and disbursements together with interest thereon.

## COUNT II

(Under Section 12(2) of the Securities Act on behalf of the 222 deal sub-class againts the promoters and defendants Birnbaum, Group and Hartwick).

36. Plaintiffs Neimand and Mishcon repeat, reiterate, and reallege each and every allegation contained in paragraphs 1 - 34 of this

Complaint with the same full force and effect as though set forth at length herein.

37. On January 28, 1972 the promoters sold to plaintiffs Neimand and Mishcon and the 222 sub-class securities consisting of joint venture investment contracts relating to land in New Jersey heretofore described as the 222 deal for a total cash consideration of approximately $420,000.

38. In order to induce these plaintiffs and the 222 sub-class to purchase said securities, the promoters made the following untrue statements of material fact and omitted to disclose the following material facts:

(a) That the purchase price of the 222 deal would be $1,334,316 whereas in fact the purchase price was $1,033,705.

(b) That purchase money mortgages given to sellers totalled $989,515 whereas in fact purchase money mortgages given to sellers totalled $802,415.

(c) That in fact a purported mortgage in the amount of $187,100 was given to defendant Group, that such

mortgage has not been recorded, that in fact defendant Group was not a seller, but in reality defendant Group had been formed by defendant Birnbaum and had paid no consideration for its mortgage.

(d) That in fact the promoters conspired and did take and pay to themselves substantial undisclosed profits in the 222 deal.

(e) That the 222 deal would be sold within two years with a substantial profit for all investors, whereas in fact the promoters knew they could not sell the 222 deal at a substantial profit because it was already artificially over-priced by them to said plaintiffs and the sub-class far in excess of the actual purchase price.

(f) That in fact defendants Boklan and Hartwick Properties Inc. ("Hartwick") acquired in their own names a portion of the 222 acre parcel without consideration at the time of the closing and that defendant Hartwick had been formed by defendant Boklan and was operated and controlled by one or more of the promoters.

39. In addition to the foregoing, the promoters made other untrue statements of material fact and failed to disclose other material facts.

40. Said plaintiffs and the 222 sub-class did not have any knowledge of the untrue statements and material omissions referred to in paragraph 38 hereof until shortly before the commencement of this action, nor could they have discovered them sooner by the exercise of reasonable diligence.

41. Plaintiffs hereby tender the securities purchased back to the promoters on their own behalf and on behalf of all class members and demand return of the consideration paid for the securities, and all money paid for real estate, taxes, closing costs, attorneys fees and other charges and disbursements together with interest thereon.

COUNT III

(Under Section 10(b) of the Exchange Act and SEC Rule 10(b)-5 on behalf of the 222 deal sub-class against the promoters and defendants Birnbaum, Group and Hartwick).

42. Plaintiffs Neimand and Mishcon repeat, reiterate and reallege each and every allegation contained in paragraphs 1 through 34 and 37 through 40 of this Complaint with the same full force and effect as though fully set forth therein.

43. The promoters knew that the statements and omissions referred to in paragraph 38 hereof were false and misleading and that plaintiffs Neimand and Mishcon and the 222 deal sub-class were relying on the truth and completeness of the representations made to them by the promoters in order to induce them to purchase said securities.

44. The promoters employed various devices, schemes and artifices to defraud and engaged in acts, practices and a course of business which operated as a fraud and deceit upon plaintiffs Neimand and Mishcon and the 222 deal sub-class in connection with their purchases of said securities as more fully set forth in paragraph 38 hereof.

45. Defendants Birnbaum, Group and Hartwick assisted, aided and abetted the promoters in the fraudulent activities described in paragraph 44 hereof.

46. By reason of the fraudulent activities of said defendants, plaintiffs Neimand, and Mishcon and the 222 deal sub-class have suffered damages based upon the difference between the purchase price for their securities and the true value of these securities based upon the actual selling price of the 222 deal.

COUNT IV

(Under New York Law and
Equity on behalf of the
222 deal sub-class against
the promoters, SVA and Cole-Hunt).

47. Plaintiffs Neimand and Mishcon repeat, reiterate and reallege each and every allegation contained in paragraphs 1 - 34, 37 - 40 and 43 - 46 of this Complaint with the same full force and effect as though fully set forth at length herein.

48. The promoters have acted and are acting as agents and fiduciaries for plaintiffs Neimand and Mishcon and the 222 deal sub-class, in connection with the acquisition, management and operation of the 222 deal.

49. The promoters have violated and are continuing to violate their fiduciary duties to these plaintiffs and the sub-class since the closing of the 222 deal to date as more fully set forth in paragraph 38 hereof and in the following respects:

(a) They have failed and refused to account to these plaintiffs and the 222 deal sub-class for their management and operation of the 222 deal and they have failed and refused to provide financial and other information concerning the 222 deal from the inception thereof.

(b) They have periodically demanded and received from these plaintiffs and the 222 deal sub-class monies purportedly needed to pay interest on the fictitious Group mortgage.

(c) They have demanded and received from these plaintiffs and the 222 deal sub-class monies purportedly to be used for payment to others, including Cole-Hunt Development Corporation ("Cole-Hunt") and SVA, to act as agents for the 222 deal sub-class in negotiating for and obtaining sewerage disposal rights permits in the township of Winslow, from State and County regulatory bodies without accounting for same.

(d) Defendant Cole-Hunt which was formed by defendant Boklan and is owned and operated by defendant E. Rodin, has been used by the promoters for the purpose of giving the appearance to said plaintiffs and the 222 deal sub-class of unavoidable delay in the sale of the 222 deal.

(e) SVA was organized and operated by defendant Vogel and has been used by defendant Vogel for purposes of giving the appearance to said plaintiffs and the 222 deal sub-class of unavoidable delay in the sale of the 222 deal.

50. The promoters have violated and continue to violate their fiduciary duties to plaintiffs Neimand and Mishcon and the 222 deal sub-class in other respects.

51. By reason of the foregoing, plaintiffs Neimand and Mishcon and the 222 deal sub-class demand an accounting from the promoters for all money received and disbursed and all obligations owing to or incurred by them or any other person or entity on their behalf for and in connection with the acquisition, management, and operation of the 222 deal.

COUNT V

(Under Section 12(2) of the Securities Act on behalf of the 196 deal sub-class against the promoters and defendant Mendon).

Plaintiffs Neimand and Ingram repeat, reiterate and reallege each and every allegation contained in paragraphs 1 - 34 of this Complaint with the same full force and effect as though set forth at length herein.

53. On July 30, 1973 the promoters sold to plaintiffs Neimand and Ingram and the 196 sub-class securities consisting of joint venture investment contracts relating to land in New Jersey heretofore described as the 196 deal for a total cash consideration of approximately $114,000.

54. In order to induce these plaintiffs and the 196 sub-class to purchase said securities, the promoters made the following untrue statements of material fact and omitted to disclose the following material facts:

(a) That the purchase price of the 196 deal would be $392,000 whereas in fact the purchase price was $315,000.

(b) That purchase money mortgages given to sellers totalled $240,000 whereas in fact purchase money mortgages given to sellers totalled $294,000.

(c) That in fact a secret mortgage in the amount of $54,000 was given to defendant Mendon Properties, Inc. ("Mendon"), that in fact defendant Mendon was not a seller, but in reality defendant Mendon had been formed by the promoters and had paid no consideration.

(d) That in fact the promoters conspired and did take and pay to themselves substantial undisclosed profits in the 196 deal.

(e) That the 196 deal would be sold within two years with a substantial profit for all investors, whereas in fact the promoters knew they could not sell the 196 deal at a substantial profit because it was already artificially over-priced by them to said plaintiffs and the 196 sub-class far in excess of the actual purchase price.

(f) That the closing statement furnished by the promoters deliberately concealed the fact that a mortgage had been issued and filed in the name of Mendon.

55. In addition to the foregoing, the promoters made other untrue statements of material fact and failed to disclose other material facts.

56. Said plaintiffs and the 196 sub-class did not have any knowledge of the untrue statements and material omissions referred to in paragraph 54 hereof until shortly before the commencement of this action, nor could they have discovered them sooner by the exercise of reasonable diligence.

57. Plaintiffs hereby tender the securities purchased back to the promoters on their own behalf and on behalf of all class members and demand return of the consideration paid for the securities, and all money paid for real estate, taxes, closing costs, attorneys fees and other charges and disbursements together with interest thereon.

COUNT VI

(Under Section 10(b) of the Exchange Act and SEC Rule 10(b)-5 on behalf of the 196 deal sub-class against the promoters and defendant Mendon).

58. Plaintiffs Neimand and Ingram repeat, reiterate and reallege each and every allegation contained in paragraphs 1 through 34 and 53 through 56 of this Complaint with the same full force and effect as though fully set forth therein.

59. The prmoters knew that the statements and omissions referred to in paragraph 54 hereof were false and misleading and that plaintiffs Neimand and Ingram and the 196 deal sub-class were relying on the truth and completeness of the representations made to them by the promoters in order to induce them to purchase said securities.

60. The promoters employed various devices, schemes and artifices to defraud and engaged in acts, practices and a course of business which operated as a fraud and deceit upon plaintiffs Neimand and

Ingram and the 196 deal sub-class in connection with their purchases of said securities as more fully set forth in paragraph 54 hereof.

61. Defendant Mendon assisted, aided and abetted the promoters in the fraudulent activities described in paragraph 60 hereof.

62. By reason of the fraudulent activities of said defendants, plaintiffs Neimand and Ingram and the 196 deal sub-class have suffered damages based upon the difference between the purchase price for their securities and the true value of these securities based upon the actual selling price of the 196 deal.

COUNT VII

(Under New York Law and Equity on behalf of the 196 deal sub-class against the promoters).

63. Plaintiffs Neimand and Ingram repeat, reiterate and reallege each and every allegation contained in paragraphs 1 - 34, 53 - 56 and 59 - 62 of this Compalint with the same full force and effect as though fully set forth at length herein.

64. The promoters have acted and are acting as agents and fiduciaries for plaintiffs Neimand and Ingram and the 196 deal sub-class, in connection with the acquisition, management and operation of the 196 deal.

65. The promoters have violated and are continuing to violate their fiduciary duties to these plaintiffs and the sub-class since the closing of the 196 deal to date as more fully set forth in paragraph 54 hereof and in the following respects:

(a) They have failed and refused to account to these plaintiffs and the 196 deal sub-class for their management and operation of the 196 deal and they have failed and refused to provide financial and other information concerning the 196 deal from the inception thereof.

(b) They have periodically demanded and received from these plaintiffs and the 196 deal sub-class, monies purportedly needed to pay interest on the ficititious Mendon mortgage.

66. The promoters have violated and continue to violate their fiduciary duties to plaintiffs Neimand and Ingram and the 196 deal sub-class in other respects.

67. By reason of the foregoing, plaintiffs Neimand and Ingram and the 196 deal sub-class demand an accounting from the promoters for all money received and disbursed and all obligations owing to or incurred by them or any other person or entity on their behalf for and in connection with the acquisition, management, and operation of the 196 deal.

## COUNT VIII

(Under Section 12(2) of the Securities Act on behalf of the 231 deal sub-class against the promoters and defendant Rillstone).

68. Plaintiff Neimand repeats, reiterates and realleges each and every allegation contained in paragraphs 1 - 34 of this Complaint with the same full force and effect as though set forth at length herein.

69. On November 10, 1972 the promoters sold to plaintiff Neimand and the 231 sub-class securities consisting of joint venture investment contracts relating to land in New Jersey heretofore described as the 231 deal for a total cash consideration of approximately $135,000.

70. In order to induce this plaintiff and the 231 sub-class to purchase said securities, the promoters made the following untrue statements of material fact and omitted to disclose the following material facts:

(a) That the purchase price of the 231 deal would be $504,208 whereas in fact the purchase price was $405,000.

(b) That purchase money mortgages given to sellers totalled $378,000 whereas in fact purchase money mortgages given to sellers totalled $304,000.

(c) That in fact a purported mortgage in the amount of $74,000 was given to defendant Rillstone Properties,

Inc. ("Rillstone"), that in fact defendant Rillstone was not a seller, but in reality defendant Rillstone had been formed by the promoters and had paid no consideration for its mortgage.

(d) That in fact the promoters conspired to and did take and pay to themselves substantial undisclosed profits in the 231 deal.

(e) That the 231 deal would be sold within two years with a substantial profit for all investors, whereas in fact the promoters knew they could not sell the 231 deal at a substantial profit because it was already artificially over-priced by them to said plaintiff and the sub-class far in excess of the actual purchase price.

71. In addition to the foregoing, the promoters made other untrue statements of material fact and failed to disclose other material facts.

72. Said plaintiff and the 231 sub-class did not have any knowledge of the untrue statements and material omissions referred to in paragraph 70 hereof until shortly before the commencement of this action, nor could he have discovered them sooner by the exercise of reasonable diligence.

73. Plaintiff hereby tenders the securities purchased back to the promoters on his own behalf and on behalf of all class members and demands return of the consideration paid for the securities, and all money paid for real estate, taxes, closing costs, attorneys fees and other charges and disbursements together with interest thereon.

COUNT IX

(Under Section 10(b) of the Exchange Act and SEC Rule 10(b)-5 on behalf of the 231 deal sub-class against the promoters and defendant Rillstone).

74. Plaintiff Neimand repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 34 and 69 through 72 of this Compalint with the same full force and effect as though fully set forth therein.

75. The promoters knew that the statements and omissions referred to in paragraph 70 hereof were false and misleading and that plaintiff Neimand and the 231 deal sub-class were relying on the truth and completeness of the representations made to them by the promoters in order to induce them to purchase said securities.

76. The promoters employed various devices, schemes and artifices to defraud and engaged in acts, practices and a course of business which operated as a fraud and deceit upon plaintiff Neimand and

the 231 deal sub-class in connection with their purchases of said securities as more fully set forth in paragraph 70 hereof.

77. Defendant Rillstone assisted, aided and abetted the promoters in the fraudulent activities described in paragraph 76 hereof.

78. By reason of the fraudulent activities of said defendants, plaintiff Neimand and the 231 deal sub-class have suffered damages based upon the difference between the purchase price for their securities and the true value of these securities based upon the actual selling price of the 231 deal.

## COUNT X

(Under New York Law and Equity on behalf of the 231 deal sub-class against the promoters).

79. Plaintiff Neimand repeats, reiterates and realleges each and every allegation contained in paragraphs 1 - 34, 69 - 76 and 75 - 78 of this Complaint with the same full force and effect as though fully set forth at length herein.

80. The promoters have acted and are acting as agents and fiduciaries for plaintiff Neimand and the 231 deal sub-class, in connection with the acquisition, management and operation of the 231 deal.

81. The promoters have violated and are continuing to violate their fiduciary duties to this plaintiff and the sub-class since the closing of the 231 deal to date as more fully set forth in paragraph 70 hereof and in the following respects:

(a) They have failed and refused to account to this plaintiff and the 231 deal sub-class for their management and operation of the 231 deal and they have failed and refused to provide financial and other information concerning the 231 deal from the inception thereof.

(b) They have periodically demanded and received from this plaintiff and the 231 deal sub-class, monies purportedly needed to pay interest on the fictitious Rillstone mortgage.

82. The promoters have violated and continue to violate their fiduciary duties to plaintiff Neimand and the 231 deal sub-class in other respects.

83. By reason of the foregoing, plaintiff Neimand and the 231 deal sub-class demand an accounting from the promoters for all money received and disbursed and all obligations owing to or incurred by them or any other person or entity on their behalf for and in connection with the acquisition, management, and operation of the 231 deal.

## COUNT XI

(Under Section 12(2) of the Securities Act on behalf of the 250 deal sub-class against the promoters and defendant Rillstone).

84. Plaintiffs Neimand and Pallack repeat, reiterate and reallege each and every allegation contained in paragraphs 1 - 34 of this Complaint with the same full force and effect as though set forth at length herein.

85. On February 9, 1973 the promoters sold to plaintiffs Neimand and Pallack and the 250 sub-class securities consisting of joint venture investment contracts relating to land in New Jersey heretofore described as the 250 deal for a total cash consideration of approximately $152,500.

86. In order to induce these plaintiffs and the 250 sub-class to purchase said securities, the promoters made the following untrue statements of material fact and omitted to disclose the following material facts:

(a) That the purchase price of the 250 deal would be $575,000 whereas in fact the purchase price was $485,000.

(b) That purchase money mortgages given to sellers totalled $431,250 whereas in fact purchase money mortgages given to sellers totalled $385,000.

(c) That in fact a purported mortgage in the amount of $46,250 was given to defendant Rillstone that such mortgage has not been recorded, that in fact defendant Rillstone was not a seller, but in reality defendant Rillstone had been formed by the promoters and had paid no consideration for its mortgage.

(d) That in fact the promoters conspired to and did take and pay to themselves substantial undisclosed profits in the 250 deal.

(e) That the 250 deal would be sold within two years with a substantial profit for all investors, whereas in fact the promoters knew they could not sell the 250 deal at a substantial profit because it was already artificially over-priced by them to said plaintiffs and the sub-class far in excess of the actual purchase price.

87. In addition to the foregoing, the promoters made other untrue statements of material fact and failed to disclose other material facts.

88. Said plaintiffs and the 250 sub-class did not have any knowledge of the untrue statements and material omissions referred to in

paragraph 86 hereof until shortly before the commencement of this action, nor could they have discovered them sooner by the exercise of reasonable diligence.

89. Plaintiffs hereby tender the securities purchased back to the promoters on their own behalf and on behalf of all class members and demand return of the consideration paid for the securities, and all money paid for real estate taxes, closing costs, attorneys fees and other charges and disbursements together with interest thereon.

COUNT XII

(Under Section 10(b) of the Exchange Act and SEC Rule 10(b)-5 on behalf of the 250 deal sub-class against the promoters and defendant Rilistone)

90. Plaintiffs Neimand and Pallack repeat, reiterate and reallege each and every allegation contained in paragraphs 1 through 34 and 85 through 88 of this Complaint with the same full force and effect as though fully set forth therein.

91. The promoters knew that the statements and omission referred to in paragraph 86 hereof were false and misleading and that plaintiffs Neimand and Mishcon and the 250 deal sub-class were relying on the truth and completeness of the representations made to them by the promoters in order to induce them to purchase said securities.

92. The promoters employed various devices, schemes and artifices to defraud and engaged in acts, practices and a course of business which operated as a fraud and deceit upon plaintiffs Neimand and Pallack and the 250 deal sub-class in connection with their purchases of said securities as more fully set forth in paragraph 86 hereof.

93. Defendant Rillstone assisted, aided and abetted the promoters in the fraudulent activities described in paragraph 92 hereof.

94. By reason of the fraudulent activities of said defendants, plaintiffs Neimand and Pallack and the 250 deal sub-class have suffered damages based upon the difference between the purchase price for their securities and the true value of these securities based upon the actual selling price of the 250 deal.

COUNT XIII

(Under New York Law and Equity on behalf of the 250 deal sub-class against the promoters).

95. Plaintiffs Neimand and Pallack repeat, reiterate and reallege each and every allegation contained in paragraphs 1 - 34, 85 - 88 and 91 - 94 of this Complaint with the same full force and effect as though fully set forth at length herein.

96. The promoters have acted and are acting as agents and fiduciaries for plaintiffs Neimand and Pallack and the 250 deal sub-class in connection with the acquisition, management and operation of the 250 deal.

97. The promoters have violated and are continuing to violate their fiduciary duties to these plaintiffs and the sub-class since the closing of the 250 deal to date as more fully set forth in paragraph 86 hereof and in the following respects:

(a) They have failed and refused to account to these plaintiffs and the 250 deal sub-class for their management and operation of the 250 deal and they have failed and refused to provide financial and other information concerning the 250 deal from the inception thereof.

(b) They have periodically demanded and received from these plaintiffs and the 250 deal sub-class, monies purportedly needed to pay interest on the fictitious Rillstone mortgage.

98. The promoters have violated and continue to violate their fiduciary duties to plaintiffs Neimand and Pallack and the 250 deal sub-class in other respects.

99. By reason of the foregoing, plaintiffs Neimand and Pallack and the 250 deal sub-class demand an accounting from the promoters for all money received and disbursed and all obligations owing to or incurred by them or any other person or entity on their behalf for and in connection with the acquisition, management, and operation of the 250 deal.

## COUNT XIV

(Under Section 12(2) of the Securities Act on behalf of the 158 deal sub-class against the promoters and defendants Godsberg and Rillstone.)

100. Plaintiffs Neimand and Ingram repeat, reiterate, and reallege each and every allegation contained in paragraphs 1-34 of this Complaint with the same full force and effect as though set forth at length herein.

101. On August 17, 1972 the promoters sold to plaintiffs Neimand and Ingram and the 158 sub-class securities consisting of joint venture investment contracts relating to land in New Jersey heretofore described as the 158 deal for a total cash consideration of approximately $117,200.

102. In order to induce these plaintiffs and the 158 sub-class to purchase said securities, the promoters and defendant Godsberg made the following untrue statements of material fact and omitted to disclose the following material facts:

(a) That the purchase price of the 158 deal would be $530,338 whereas in fact the purchase price was $435,352.

(b) That purchase money mortgages given to sellers totalled $424,200 whereas in fact purchase money mortgages given to sellers totalled $370,000.

(c) That in fact a purported mortgage in the amount of $54,200 was given to defendant Rillstone, that in fact defendant Rillstone was not a seller, but in reality defendant Rillstone had been formed by the promoters and had paid no consideration for its mortgage.

(d) That in fact the promoters conspired to and did take and pay to themselves substantial undisclosed profits in the 158 deal.

(e) That the 158 deal would be sold within two years with substantial profit for all investors, whereas in fact the promoters knew they could not sell the 158 deal at a substantial profit because it was already artificially over-priced by them to said plaintiffs and the sub-class far in excess of the actual purchase price.

103. In addition to the foregoing, the promoters made other untrue statements of material fact and failed to disclose other material facts.

104. Said plaintiffs and the 158 sub-class did not have any knowledge of the untrue statements and material omissions referred to in paragraph 102 hereof until shortly before the commencement of this action, nor could they have discovered them sooner by the exercise of reasonable diligence.

105. Plaintiffs hereby tender the securities purchased back to the promoters on their own behalf and on behalf of all class members and demand return of the consideration paid for the securities, and all money paid for real estate taxes, closing costs, attorneys fees and other charges and disbursements together with interest thereon.

COUNT XV

(Under Section 10(b) of the Exchange Act and SEC Rule 10(b)-5 on behalf of the 158 deal sub-class against the promoters and defendants Godsberg and Rillstone.)

106. Plaintiffs Neimand and Ingram repeat, reiterate, and reallege each and every allegation contained in paragraphs 1 through 34 and 101 through 104 of this Complaint with the same full force and effect as though fully set forth therein.

107. The promoters knew that the statements and omissions referred to in paragraph 102 hereof were false and misleading and that plaintiffs Neimand and Ingram and the 158 deal sub-class were relying on the truth and completeness of the representations made to them by the promoters and Godsberg in order to induce them to purchase said securities.

108. The promoters employed various devices, schemes and artifices to defraud and engaged in acts, practices and a course of business which operated as a fraud and deceit upon plaintiffs Neimand and Ingram and the 158 deal sub-class in connection with their purchases of said securities as more fully set forth in paragraph 102 hereof.

109. Defendants Godsberg and Rillstone assisted, aided and abetted the promoters in the fraudulent activities described in paragraph 108 hereof.

110. By reason of the fraudulent activities of said defendants, plaintiffs Neimand and Ingram, and the 158 deal sub-class have suffered damages based upon the difference between the purchase price for their securities and the true value of these securities based upon the actual selling price of the 158 deal.

COUNT XVI

(Under New York Law and Equity on behalf of the 158 deal sub-class against the promoters.)

111. Plaintiffs Neimand and Ingram repeat, reiterate, and reallege each and every allegation contained in paragraphs 1-34 101-104, and 107-110 of this Complaint with the same full force and effect as though fully set forth at length herein.

112. The promoters have acted and are acting as agents and fiduciaries for plaintiffs Neimand and Ingram and the 158 deal sub-class in connection with the acquisition, management, and operation of the 158 deal.

113. The promoters have violated and are continuing to violate their fiduciary duties to these plaintiffs and the sub-class since the closing of the 158 deal to date as more fully set forth in paragraph 102 hereof and in the following respects.

(a) They have failed and refused to account to these plaintiffs and the 158 deal sub-class for their management and operation of the 158 deal and they have failed and refused to provide financial and other information concerning the 158 deal from the inception thereof.

(b) They have periodically demanded and received from these plaintiffs and the 158 deal sub-class, monies purportedly needed to pay interest on the fictitious Rillstone mortgage.

114. The promoters have violated and continue to violate their fiduciary duties to plaintiffs Neimand and Ingram and the 158 deal sub-class in other respects.

115. By reason of the foregoing, plaintiffs Neimand and Ingram and the 158 deal sub-class demand an accounting from the promoters for all money received and disbursed and all obligations owing to or incurred by them or any other person or entity for and in connection with the acquisition, management and operation of the 158 deal.

COUNT XVII

(Under Section 12(2) of the Securities Act on behalf of the 101 deal sub-class against the promoters and defendant Mendon.)

116. Plaintiffs Neimand and Pallack repeat, reiterate, and reallege each and every allegation contained in paragraphs 1-34 of this Complaint with the same full force and effect as though set forth at length herein.

117. On May 16, 1972 the promoters sold to plaintiffs Neimand and Pallack and the 101 sub-class securities consisting of joint venture investment contracts relating to land in New Jersey heretofore described as the 101 deal for a total cash consideration of approximately $185,000.

118. In order to induce these plaintiffs and the 101 sub-class to purchase said securities, the promoters made the following untrue statements of material fact and omitted to disclose the following material facts:

(a) That the purchase price of the 101 deal would be $611,760 whereas in fact the purchase price was $510,000.

(b) That purchase money mortgages given to sellers totalled $437,400 whereas in fact purchase money mortgages given to sellers totalled $382,500.

(c) That in fact a purported mortgage in the amount of $54,900 was given to defendant Mendon, which mortgage was not recorded until one year later, that in fact defendant Mendon was not a seller, but in reality defendant Mendon had been formed by the promoters and had paid no consideration for its mortgage.

(d) That in fact the promoters conspired and did take and pay to themselves substantial undisclosed profits in the 101 deal.

(e) That the 101 deal would be sold within two yearswith a substantial profit for all investors, whereas in fact the promoters knew they could not sell the 101 deal at a substantial profit because it was already artificially over-priced by them to said plaintiffs and the sub-class far in excess of the actual purchase price.

119. In addition to the foregoing, the promoters made other untrue statements of material fact and failed to disclose other material facts.

120. Said plaintiffs and the 101 sub-class did not have any knowledge of the untrue statements and material omissions referred to in paragraph 118 hereof until shortly before the commencement of this action, nor could they have discovered them sooner by the exercise of reasonable diligence.

121. Plaintiffs hereby tender the securities purchased back to the promoters on their own behalf and on behalf of all class members and demand return of the consideration paid for the securities, and all money paid for real estate taxes,closing

costs, attorneys fees and other charges and disbursements together with interest thereon.

COUNT XVIII

(Under Section 10(b) of the Exchange Act and SEC Rule 10 b -5 on behalf of the 101 deal sub-class against the promoters and defendant Mendon.)

122. Plaintiffs Neimand and Pallack repeat, reiterate, and reallege each and every allegation contained in paragraphs 1 through 34 and 117 through 120 of this Complaint with the same full force and effect as though fully set forth therein.

123. The promoters knew that the statements and omission referred to in paragraph 118 hereof were false and misleading and that plaintiff's Neimand and Mishcon and the 101 deal sub-class were relying on the truth and completeness of the representations made to them by the promoters in order to induce them to purchase said securities.

124. The promoters enployed various devices, schemes and artifices to defraud and engaged in acts, practices and a course of business which operated as a fraud and deceit upon plaintiffs Neimand and Pallack and the 101 deal sub-class in connection with their purchases of said securities as more fully set forth in paragraph 118 hereof.

125. Defendant Mendon assisted, aided and abetted the promoters in the fraudulent activities described in paragraph 124 hereof.

126. By reason of the fraudulent activities of said defendants, plaintiffs Neimand and Pallack and the 101 sub-class have suffered damages based upon the difference between the purchase price for their securities and the true value of these securities based upon the actual selling price of the 101 deal.

COUNT XIX

(Under New York Law and Equity on behalf of the 101 deal sub-class against the promoters.)

127. Plaintiffs Neimand and Pallack repeat, reiterate and reallege each and every allegation contained in paragraphs 1-34,117-120 and 123-126 of this Complaint with the same full force and effect as though fully set forth at length herein.

128. The promoters have acted and are acting as agents and fiduciaries for plaintiffs Neimand and Mishcon and the 101 deal sub-class in connection with the acquisition, management and operation of the 101 deal.

129. The promoters have violated and are continuing to violate their fiduciary duties to these plaintiffs and the sub-class since the closing of the 101 deal to date as more fully set forth in paragraph 118 hereof and in the following respects:

(a) They have failed and refused to account to these plaintiffs and the 101 deal sub-class for their management and operation of the 101 deal and they have failed and refused to provide financial and other information concerning the 101 deal from the inception thereof.

(b) They have periodically demanded and received from these plaintiffs and the deal sub-class, monies purportedly needed to pay interest on the fictitious Mendon mortgage.

130. The promoters have violated and continue to violate their fiduciary duties to plaintiffs Neimand and Pallack and the 101 deal sub-class in other respects.

131. By reason of the foregoing, plaintiffs Neimand and Pallack and the 101 deal sub-class demand an accounting from the promoters for all money received and disbursed and all obligations owing to or incurred by them or any other person or entity on their behalf for and in connection with the acquisition, management and operation of the 101 deal.

COMPLAINT

COUNT XX

(Under Section 12(2) of the Securities Act on behalf of the 150 deal sub-class against the promoters and defendants Parkham and Birnbaum.)

132. Plaintiff Gudwin repeats, reiterates and realleges each and every allegation contained in paragraphs 1 - 34 of this Complaint with the same full force and effect as though set forth at length herein.

133. On June 29, 1971, the promoters sold to plaintiff Gudwin and the 150 sub-class securities consisting of joint venture investment contracts relating to land in New Jersey heretofore described as the 150 deal for a total cash consideration of approximately $241,385.

134. In order to induce this plaintiff and the 150 sub-class to purchase said securities, the promoters made the following untrue statements of material fact and omitted to disclose the following material facts:

(a) That the purchase price of the 150 deal would be $1,128,680 whereas in fact the purchase price was $752,455.

(b) That purchase money mortgages given to sellers totalled $901,000 whereas in fact purchase money mortgages given

to sellers totalled $504,340.

(c) That in fact a purported mortgage in the amount of $396,660 was given to defendant Parkham Development Corp. ("Parkham"), that such mortgage was not recorded until one month after the deed was recorded, that in fact defendant Parkham was not a seller, but in reality defendant Parkham had been formed by the promoters and had paid no consideration for its mortgage.

(d) That in fact the promoters conspired and did take and pay to themselves substantial undisclosed profits in the 150 deal.

(e) That in fact defendants Birnbaum, Vogel and Boklan were officers of Parkham.

(f) That Parkham was being represented by one of Sellers' counsel at the closing, whereas in fact Parkham was being represented by defendant Boklan.

(g) That Parkham had other business dealings with defendant Birnbaum.

(h) That the 150 deal would be sold within two yearswith a substantial profit for all investors, whereas in fact the promoters knew they could not sell the 150 deal at a substantial profit because it was already artificially over-priced by them to said plaintiff and the 150 sub-class far in excess of the actual purchase price.

135. In addition to the foregoing, the promoters made other untrue statements of material fact and failed to disclose other material facts.

136. Said plaintiff and the 150 sub-class did not have any knowledge of the untrue statements and material omissions referred to in paragraph 134 hereof until shortly before the commencement of this action, nor could they have discovered them sooner by the exercise of reasonable diligence.

137. Plaintiff hereby tenders the securities purchased back to the promoters on their own behalf and on behalf of all class members and demands return of the consideration paid for the securities, and all money paid for real estate taxes, closing costs, attorneys fees and other charges and disbursements together with interest thereon.

## COUNT XXI

(Under Section 10(b) of the Exchange Act and SEC Rule 10 b-5 on behalf of the 150 deal sub-class against the promoters and defendants Birnbaum and Parkham.)

138. Plaintiff Gudwin repeats, reiterates, and re-alleges each and every allegation contained in paragraphs 1 through 34 and 133 through 136 of this Complaint with the same full force and effect as though fully set forth therein.

139. The promoters knew that the statements and omissions referred to in paragraph 134 hereof were false and misleading and that plaintiff Gudwin and the 150 deal sub-class were relying on the truth and completeness of the representations made to them by the promoters in order to induce them to purchase said securities.

140. The promoters employed various devices, schemes and artifices to defraud and engaged in acts, practices and a course of business which operated as a fraud and deceit upon plaintiff Gudwin and the 150 deal sub-class in connection with their purchases of said securities as more fully set forth in paragraph 134 hereof.

141. Defendants Birnbaum and Parkham assisted, aided and abetted the promoters in the fraudulent activities described in paragraph 140 hereof.

142. By reason of the fradulent activities of said defendants, plaintiff Gudwin and the 150 deal sub-class have suffered damages based upon the difference between the purchase price for their securities and the true value of these securities based upon the actual selling price of the 150 deal.

COUNT XXII

(Under New York Law and Equity on behalf of the 150 deal sub-class against the promoters SVA and Cole-Hunt.)

143. Plaintiff Gudwin repeats, reiterates and realles each and every allegation contained in paragraphs 1 - 34, 133 - 136 and 139-142 of this Complaint with the same full force and effect as though fully set forth at length herein.

144. The promoters have acted and are acting as agents and fiduciaries for plaintiff Gudwin and the 150 deal sub-class in connection with the acquisition, management and operation of the 150 deal.

145. The promoters have violated and are continuing to violate their fiduciary duties to this plaintiff and the sub-class since the closing of the 150 deal to date as more fully set forth in paragraph 134 hereof and in the following respects:

(a) They have failed and refused to account to this plaintiff and the 150 deal sub-class for their management and operation of the 150 deal and they have failed and refused to provide financial and other information concerning the 150 deal from the inception thereof.

(b) They have periodically demanded and received from this plaintiff and the 150 deal sub-class monies purportedly needed to pay interest on the fictitious Parkham mortgage.

(c) They have demanded and received from this plaintiff and the 150 deal sub-class monies purportedly to be used for payment to others, including Cole-Hunt and SVA, to act as agents for the 150 deal sub-class in negotiating for and obtaining sewerage disposal rights permits in the township of Winslow, from State and County regulatory bodies without accounting for same.

(d) Defendant Cole-Hunt which was formed by defendant Boklan and is owned and operated

by defendant E. Rodin, has been used by the promoters for the purpose of giving the appearance to said plaintiff and the 150 deal sub-class of an unavoidable delay in the sale of the 150 deal.

(e) SVA was organized and operated by defendant Vogel and has been used by defendant Vogel for purposes of giving the appearance to said plaintiff and the 150 deal sub-class of an unavoidable delay in the sale of the 150 deal.

146. The promoters have violated and continue to violate their fiduciary duties to plaintiff Gudwin and the 150 deal sub-class in other respects.

147. By reason of the foregoing, plaintiff Gudwin and the 150 deal sub-class demand an accounting from the promoters for all money received and disbursed and all obligations owing to or incurred by them or any other person or entity on their behalf for and in connection with the acquisition, management, and operation of the 150 deal.

COUNT XXIII

(Under Section 12(2) of the Securities Act on behalf of the 109 deal sub-class against the promoters and defendants Birnbaum, Byerly, Tamerlane and Mendon).

148. Plaintiffs Gudwin, Ingram and Jarkow repeat, reiterate, and reallege each and every allegation contained in paragraphs 1 - 34 of this Complaint with the same full force and effect as though set forth at length herein.

149. On July 6, 1971, the promoters sold to plaintiffs Gudwin, Ingram and Jarkow and the 109 sub-class securities consisting of joint venture investment contracts relating to land in New Jersey heretofore described as the 109 deal for a total cash consideration of approximately $370,000.

150. In order to induce these plaintiffs and the 109 sub-class to purchase said securities, the promoters made the following untrue statements of material fact and omitted to disclose the following material facts:

(a) That the purchase price of the 109 deal would be $1,045,000, whereas in fact the purchase price was $234,034.

(b) That in June, 1970, the promoters completed the acquisition of the land involved in the 109 deal for $234,034, which also included the issuance of purchase money mortgages to Sellers totaling $174,850.

(c) That between March, 1970 and the closing date, the promoters used various corporate and individual conduits and nominees to create the appearance of transfers of title of the 109 deal land to and from purported purchasers and sellers at substantially increasing prices.

(d) That in March, 1970, the promoters used Tamerlane Properties, Inc. ("Tamerlane"), a corporation formed, owned and operated by them, to take title to a portion of the 109 deal land.

(e) That in June, 1970, the promoters used other conduits to take title to the remaining portions of the 109 deal land.

(f) That in November, 1970, the promoters and defendant Birnbaum caused title to the 109

deal land to be transferred to a Hyman Pogash and a Burton Bronster for a purported consideration of $638,655, which included the issuance of five additional purported mortgages, aggregating $474,025, making a total of $648,875 in mortgages then outstanding.

(g) That in November, 1970, the promoters, defendant Birnbaum and others caused five additional mortgages to be issued, including one to defendant Tamerlane in the sum of $107,085, and one to defendant Boklan in the sum of $155,340 for which no consideration was paid.

(h) That in February, 1971, the Boklan mortgage in the sum of $155,340 was assigned to defendant Byerly Properties, Inc. ("Byerly") a corporation formed, owned and operated by the promoters; and on the same day, said mortgage was reassigned by Byerly to a third party, who paid consideration to Byerly therefor.

(i) That on July 6, 1971, the promoters, defendant Birnbaum and others caused title of the 109 deal land to be transferred back from Hyman Pogash and Burton Bronster to defendant Boklan as nominee for the 109 deal sub-class for a purported consideration of $951,445, which included the issuance of two additional purported mortgages by Boklan aggregating $131,000, making a total of $779,875 in mortgages then outstanding.

(j) That on July 6, 1971, the promoters and defendant Birnbaum and others caused the two additional purported mortgages to be issued by defendant Boklan, one of which was to Hyman Pogash and Burton Bronster in the sum of $108,000, and the other which was issued to defendant Mendon, a corporation formed, owned and operated by the promoters, in the sum of $23,000 for which no consideration was paid.

(k) That shortly after July 6, 1971, the $108,000 mortgage was reduced in two steps, first by $80,000, and second by an additional $20,000, leaving an $8,000 mortgage which was assigned to third parties.

(l) That in fact, the promoters conspired to and did take and pay to themselves, substantial undisclosed profits in the 109 deal.

(m) That the 109 deal would be sold within two years with a substantial profit for all investors, whereas in fact the promoters knew they could not sell the 109 deal at a substantial profit because it was already artificially over-priced by them to said plaintiffs and the sub-class far in excess of the actual purchase price.

(n) That defendants Vogel and Rodin were participants in the 109 deal and had made cash investments, respectively, of $57,500 and

$95,000, which sums amounted to 40% of the total sums invested, whereas in fact, and contrary to their written undertakings to these plaintiffs and members of the 109 deal sub-class not to dispose of their participations in the 109 deal, defendants Vogel and E. Rodin sold their participations in the 109 deal to others, who are now members of the 109 deal sub-class.

151. In addition to the foregoing, the promoters made other untrue statements of material fact and failed to disclose other material facts.

152. Said plaintiffs and the 109 sub-class did not have any knowledge of the untrue statements and material omissions referred to in paragraph 150 hereof until shortly before the commencement of this action, nor could they have discovered them sooner by the exercise of reasonable diligence.

153. Plaintiffs hereby tender the securities purchased back to the promoters on their own behalf and on behalf of all class members and demand return of the consideration paid for the

securities, and all money paid for real estate taxes, closing costs, attorneys' fees and other charges and disbursements, together with interest thereon.

COUNT XXIV

(Under Section 10(b) of the Exchange Act and SEC Rule 10(b)-5 on behalf of the 109 deal sub-class against the promoters and defendants Birnbaum, Byerly, Tamerlane and Mendon).

154. Plaintiffs Gudwin, Ingram and Jarkow repeat, reiterate and reallege each and every allegation contained in paragraphs 1 through 34 and 149 through 152 of this Complaint with the same full force and effect as though fully set forth therein.

155. The promoters knew that the statements and omissions referred to in paragraph 150 hereof were false and misleading and that plaintiffs Gudwin, Ingram and Jarkow and the 109 deal sub-class were relying on the truth and completeness of the representations made to them by the promoters in order to induce them to purchase said securities.

156. The promoters employed various devices, schemes and artifices to defraud and engaged in acts, practices, and a course of business which operated as a fraud and deceit upon said

plaintiffs and the 109 deal sub-class in connection with their purchases of said securities as more fully set forth in paragraph 150 hereof.

157. Defendants Birnbaum, Byerly, Tamerlane and Mendon assisted, aided and abetted the promoters in the fraudulent activities described in paragraph 156 hereof.

158. By reason of the fraudulent activities of said defendants, said plaintiffs and the 109 deal sub-class have suffered damages and based upon the difference between the purchase price for their securities and the true value of these securities based upon the actual selling price of the 109 deal as of March 14, 1970, June 6, 1970 and June 22, 1970.

COUNT XXV

(Under New York Law and Equity on behalf of the 109 deal sub-class against the promoters SVA and Cole-Hunt).

159. Plaintiffs Gudwin, Ingram and Jarkow repeat, reiterate and reallege each and every allegation contained in paragraphs 1 - 34, 149 - 152, and 155-158 of this Complaint with the same full force and effect as though fully set forth at length herein.

160. The promoters have acted and are acting as agents and fiduciaries for plaintiffs Gudwin, Ingram and Jarkow and the 109 deal sub-class in connection with the acquisition, management and operation of the 109 deal.

161. The promoters have violated and are continuing to violate their fiduciary duties to these plaintiffs and the sub-class since the closing of the 109 deal to date as more fully set forth in paragraphs 150 thru 158 hereof and in the following respects:

(a) They have failed and refused to account to these plaintiffs and the 109 deal sub-class for their management and operation of the 109 deal and they have failed and refused to provide financial and other information concerning the 109 deal from the inception thereof.

(b) They have periodically demanded and received from these plaintiffs and the deal sub-class, monies purportedly needed to pay interest on the purported and/or fictitious mortgages.

(c) They have demanded and received from these plaintiffs and the 109 deal sub-class, monies purportedly to be used for payment to others, including Cole-Hunt Development Corporation ("Cole-Hunt") and SVA, to act as agents for the 109 deal sub-class in negotiating for and obtaining sewerage disposal rights permits in the township of Winslow, from State and County regulatory bodies without accounting for same.

(d) Defendant Cole-Hunt which was formed by defendant Boklan and is owned and operated by defendant E. Rodin, has been used by the promoters for the purpose of giving the appearance to said plaintiffs and the 109 deal sub-class of unavoidable delay in the sale of the 109 deal.

(e) SVA was organized and operated by defendant Vogel and has been used by defendant Vogel for purposes of giving the appearance to

said plaintiffs and the 109 deal sub-class of unavoidable delay in the sale of the 109 deal.

162. The promoters have violated and continue to violate their fiduciary duties to these plaintiffs and the 109 deal sub-class in other respects.

163. By reason of the foregoing, plaintiffs Gudwin, Ingram and Jarkow and the 109 deal sub-class demand an accounting from the promoters for all money received and disbursed and all obligations owing to or incurred by them or any other person or entity on their behalf for and in connection with the acquisition, management and operation of the 109 deal.

WHEREFORE, plaintiffs demand judgment as follows:

(a) On Count I of the Complaint on behalf of the class against the promoters for the return of all consideration paid for the securities, and all monies paid for real estate taxes, closing costs, attorneys' fees, and other charges and disbursements together with interest thereon.

(b) On Counts II-XXV of the Complaint on behalf of various sub-classes referred to in such Counts against the promoters and the other defendants named in such Counts for

a return of the consideration paid for the securities described in such Counts, and for all monies paid for real estate taxes, closing costs, attorneys' fees and other charges and disbursements together with interest thereon in connection with the deals described in such Counts, or in the alternative, for damages based upon the difference between the purchase price for the securities described in such Counts and the true value of said securities, based upon the actual selling price of the deals referred to in such Counts; and for an accounting from the promoters for all monies received and disbursed, and all obligations owing to or incurred by them or any other person or entity on their behalf for and in connection with the acquisition, management, and operation of the various deals referred to in such Counts; and

(c) for such other and further relief as to this Court may seem just and proper, together with plaintiffs' costs and disbursements in this action, including reasonable attorneys' and accountants' fees.

LIPPER, LOWEY & DANNENBERG

By _____

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COMPLAINT

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PLAINTIFFS' REQUEST FOR ADMISSIONS UNDER RULE 36.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

KARL NEIMAND, et al,

Plaintiffs, : 74 Civil 970 (EN)

-against-

MENDON PROPERTIES, INC., et al, : REQUEST FOR ADMISSIONS UNDER RULE 36

Defendants.

TO: EUGENE RODIN
KENNETH E. BOKLAN
SEYMOUR VOGEL
BRUCE RODIN
MENDON PROPERTIES, INC.
PARKHAM DEVELOPMENT CORP.
RILLSTONE PROPERTIES, INC.
GODSBERG REALTY CORP.
BYERLY PROPERTIES, INC.
GROUP ADMINISTRATORS CORP.
TAMERLANE PROPERTIES, INC.
HARTWICK PROPERTIES, INC.
COLE-HUNT DEVELOPMENT CORPORATION
SY VOGEL ASSOCIATES

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, plaintiffs request each of the defendants above named to admit for purposes of the pending action the truth of the following or within 30 days from the receipt hereof to serve upon said plaintiffs answers or objections to this request.

1. Defendant Eugene Rodin between January 1, 1971 and December 31, 1973 promoted persons to acquire interests in the acquisition of the following real property:

| Description | Date of Title Closing |
|---|---|
| 150.491 acres in Winslow Township, Camden County, New Jersey ("The 150 Transaction") | June 29, 1971 |

PLAINTIFFS' REQUEST FOR ADMISSIONS UNDER RULE 36

| | |
|---|---|
| 109.05 acres in Winslow Township, Camden County, New Jersey ("The 109 Transaction") | July 6, 1971 |
| 222.386 acres in Winslow Township, Camden County, New Jersey ("The 222 Transaction") | January 28, 1972 |
| 101.96 acres in Hope Township, Warren County, New Jersey ("The 102 Transaction") | May 16, 1972 |
| 158.31 acres in Hope Township, Warren County, New Jersey ("The 158 Transaction") | August 17, 1972 |
| 231.82 acres in Frelinghuysen Township, Warren County, New Jersey ("The 231 Transaction") | November 10, 1972 |
| 250 acres in Independence Township, Warren County, New Jersey ("The 250 Transaction") | February 9, 1973 |
| 196.555 acres in Allamuchy Township, Warren County, New Jersey ("The 196 Transaction") | July 30, 1973 |

2. In each of the aforesaid eight transactions (hereinafter sometimes collectively referred to as the "Eight Transactions"), defendant Kenneth E. Boklan acted as attorney for the respective purchasers.

3. At all material times since January, 1971, Kenneth E. Boklan has been an attorney licensed to practice in the State of New York.

4. At all material times since January, 1971, Seymour Vogel has been a real estate broker licensed by the State of New York and doing business under the name of Sy Vogel Associates.

PLAINTIFFS' REQUEST FOR ADMISSIONS UNDER RULE 36

5. At all relevant times since January, 1971, the office addresses of Kenneth E. Boklan and Seymour Vogel have been at: 534 Broad Hollow Road, Melville, New York 11746.

6. Kenneth E. Boklan is the attorney who incorporated each of the following corporate defendants:

| Name | Date and State of Incorporation |
|---|---|
| Mendon Properties, Inc. | March 1, 1971 - New York |
| Byerly Properties, Inc. | April 11, 1969 - New York |
| Cole-Hunt Development Corp. | December 11, 1972 - New York |
| Hartwick Properties, Inc. | December 30, 1970 - New York |
| Parkham Development Corp. | October 28, 1970 - New York |
| Rillstone Properties, Inc. | October 3, 1972 - New York |
| Tamerlane Properties, Inc. | August 12, 1968 - New York |

7. Kenneth E. Boklan, in each of the certificates of incorporation for the corporations set forth at 6, except Tamerlane Properties, Inc., is the designated agent for the service of process by the Secretary of State.

8. For acting as the attorney for the purchasers in the Eight Transactions, Kenneth E. Boklan received attorney's fees aggregating in excess of $60,000.00.

9. Eugene Rodin and/or Seymour Vogel and/or members of their immediate families are the principal officers and principal

shareholders of each of the aforesaid defendant corporations as well as of the following corporations:

| | |
|---|---|
| The Godsberg Realty Corp. | - Incorporated in New York on January 7, 1972 |
| Helicopter Models, Inc., now known as Ivanhoe Enterprises, Inc. | - Incorporated in New York on November 8, 1971 |
| Group Administrators Corp. | - Incorporated in New York on November 3, 1971 |
| Portage Properties, Inc. | - Incorporated in New York on March 1, 1971 |

10. Eugene Rodin raised capital from other persons ("the public investors") to invest in the acquisitions of one or more of the Eight Transactions.

11. Kenneth E. Boklan, Seymour Vogel and Bruce Rodin assisted Eugene Rodin in raising capital from other persons ("the public investors") to invest in the acquisitions of one or more of the Eight Transactions.

12. Bruce Rodin is the son of Eugene Rodin and during 1971 was associated with Seymour Vogel as a licensed real estate salesman or broker at 534 Broad Hollow Road, Melville, New York. Since 1972 he has been a licensed real estate broker under his own name with an office at 505 Northern Boulevard, Great Neck, New York 11021.

PLAINTIFFS' REQUEST FOR ADMISSIONS UNDER RULE 36

13. Eugene Rodin with the assistance of certain of the other individual defendants raised initial cash capital for the acquisitions of the Eight Transactions from the public investors in the following amounts:

| | |
|---|---|
| 150 Transaction | $ 342,000 |
| 109 Transaction | 312,500 |
| 222 Transaction | 345,000 |
| 102 Transaction | 160,000 |
| 158 Transaction | 117,200 |
| 231 Transaction | 110,000 |
| 250 Transaction | 127,500 |
| 196 Transaction | 92,500 |
| | $ 1,506,700 |

14. In connection with each of the Eight Transactions, each of the public investors in those respective acquisitions received copies of each of the following documents relating to those Transactions in which he invested:

(i) An executed copy of an Agreement among "Joint Venturers" ("The Agreement Among Investors");

(ii) A Memorandum of Contract;

(iii) A "Statement as to Closing of Title" ("Closing Statement").

PLAINTIFFS' REQUEST FOR ADMISSIONS UNDER RULE 36

15. All of the documents referred to in 14, supra, were drafted and/or prepared by Kenneth E. Boklan.

16. The respective Memoranda of Contract and Closing Statements for each of the Eight Transactions represented to the respective public investors that the purchase price for the real property was as follows:

| | (i) Purchase Price Recited in Memorandum of Contract Submitted to Public Investors | (ii) Purchase Price Recited in Closing Statement Submitted to Public Investors |
|---|---|---|
| 150 Transaction | $ 1,128,000.00 | $ 1,128,680.00 |
| 109 Transaction | 1,045,000.00 | 1,045,000.00 |
| 222 Transaction | 1,320,000.00 | 1,334,316.00 |
| 102 Transaction | 612,000.00 | 611,760.00 |
| 158 Transaction | 536,000.00 | 530,338.50 |
| 231 Transaction | 504,208.50 | 504,208.50 |
| 250 Transaction | 575,000.00 | 575,000.00 |
| 196 Transaction | 392,000.00 | 392,000.00 |

17. The purchase prices represented for each of the Eight Transactions were inflated and overstated as follows:

PLAINTIFFS' REQUEST FOR ADMISSIONS UNDER RULE 36

| | (i) Actual Aggregate Purchase Price as Recited in Recorded Deeds and/or in Sellers Closing Statements (Not Disclosed to Public Investors) | (ii) Overstatement Based Upon Comparison of Deeds with Closing Statements Submitted to Public Investors |
|---|---|---|
| 150 Transaction | $ 752,455.00 | $ 376,225.00 |
| 109 Transaction | 951,455.00 | 93,545.00 |
| 222 Transaction | 1,033,705.00 | 300,611.00 |
| 102 Transaction | 510,000.00 | 101,760.00 |
| 158 Transaction | 435,382.60 | 94,955.90 |
| 231 Transaction | 405,000.00 | 99,208.50 |
| 250 Transaction | 485,000.00 | 90,000.00 |
| 196 Transaction | 315,000.00 | 77,000.00 |

18. The respective Closing Statements recited that purchase money mortgage(s) in the following aggregate amounts were executed and delivered to the respective seller(s), when in fact the principal amount of the mortgage(s) to the seller(s) were less than that indicated in the Closing Statements, and the differences therein were reflected in mortgages executed by the purchasers and delivered to certain of the defendant corporations as follows:

PLAINTIFFS' REQUEST FOR ADMISSIONS UNDER RULE 36

| | (i) As Recited in Closing Statement | (ii) Actual Purchase Money Mortgage Delivered to Seller | (iii) Mortgage Delivered to Defendant Corporation * |
|---|---|---|---|
| 150 Transaction | $ 901,000 | $ 504,340 | $396,660 to Parkham Development Corp. |
| 109 Transaction | 51,000 | 28,000 | $23,000 to Mendon Properties, Inc. |
| 222 Transaction | 989,515 | 802,415 | $187,100 to Group Administrators Corp. |
| 102 Transaction | 437,400 | 382,500 | $54,900 to Mendon Properties, Inc. |
| 158 Transaction | 369,200 | 315,000 | $54,200 to Rillstone Properties, Inc. |
| 231 Transaction | 208,000 | 134,000 | $74,000 to Rillstone Properties, Inc. |
| 250 Transaction | 431,250 | 385,000 | $46,250 to Rillstone Properties, Inc. |
| 196 Transaction | 294,000 | 240,000 | $54,000 to Mendon Properties, Inc. |

19. A. At various times between June 1971 and July 1974, defendant Kenneth F. Boklan, by use of the mails, requested the plaintiffs and/or other Public Investors in the respective Eight Transactions to send to him payments of interest for one or more of the alleged purchase money mortgages referred to in column (iii) of item 18, supra.

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* represented to have been given to seller(s)

PLAINTIFFS' REQUEST FOR ADMISSIONS UNDER RULE 36

B. The plaintiffs and other Public Investors in connection with the Eight Transactions have remitted to Kenneth E. Boklan payments for interest aggregating in excess of $140,000.

C. Kenneth E. Boklan received the sums referred to in (B), supra, for the benefit of the defendant corporations and/or Eugene Rodin, Seymour Vogel, Bruce Rodin and/or Kenneth E. Boklan, and these monies were converted to the benefit and use of these defendants.

20. A. With respect to the real estate of the 109 Transaction, the defendant Tamerlane Properties, Inc. holds a mortgage in the principal amount of $107,085 on the properties and a Samuel L. Grimes, former law partner of Kenneth E. Boklan, holds a mortgage in the principal amount of $53,085.

B. On or about November 25, 1970, Kenneth E. Boklan received a mortgage to secure the principal amount of $155,340.00 on all of the real property which is the subject of the 109 Transaction and assigned that mortgage on February 10, 1971, to the defendant, Byerly Properties, Inc.

C. On or about February 10, 1971, Byerly Properties, Inc. assigned the $155,340.00 mortgage, referred to in "B" to Sackman-Gillihand Corporation; the monies received for that assignment personally benefitted the Promoter Defendants.

PLAINTIFFS' REQUEST FOR ADMISSIONS UNDER RULE 36

21. Eugene Rodin was aware of the contents of each Memorandum Contract and Closing Statement for each of the Eight Transactions at or about the time each was prepared and/or delivered to the public investors.

22. Seymour Vogel was aware of the contents of each Memorandum of Contract and Closing Statement for each of the Eight Transactions at or about the time each was prepared and/or delivered to the public investors.

23. Bruce Rodin was aware of the contents of each Memorandum of Contract and Closing Statement for each of the Eight Transactions at or about the time each was prepared and/or delivered to the public investors.

24. In connection with each of the Eight Transactions, one or more of the following was transmitted through the use of the mails by one or more of the defendants to one or more of the public investors in the respective Eight Transactions.

(i) An executed copy of the Agreement Among Investors;

(ii) The Memorandum of Contract;

(iii) The Closing Statement;

(iv) Letters requesting initial capital contributions or the balance thereof;

(v) Letters requesting additional monies for payments of interest due on mortgages, for payments to engineers and/or to surveyors, and for other expenses.

25. Between January, 1971 and December, 1973, payments of capital contributions and of expenses, as requested, were transmitted by the investors to Kenneth E. Boklan and/or one or more of the other individual defendants through the mails.

26. A. Each Memorandum of Contract ("Memorandum") was prepared by Kenneth E. Boklan.

B. Each Memorandum in the left hand lower margin of the page bore the printed legend "Kenneth E. Boklan, Attorney at Law, Melville, New York".

C. Each Memorandum set forth in summary fashion the following information:

(i) Property location;

(ii) Name(s) of seller(s);

(iii) Name of purchaser;

(iv) Date of contract;

(v) Date of closing;

(vi) The purchase price;

(vii) The terms of payment of the purchase price, including the amount due on the contract;

PLAINTIFFS' REQUEST FOR ADMISSIONS UNDER RULE 36

(viii) The maturity of the mortgages and the rate of interest.

D. Each Memorandum was materially false and misleading in that it represented and set forth a materially false (i) inflated purchase price; (ii) inflated amount of dollars due or paid on the contract to the seller; and (iii) an inflated principal amount of the purchase money mortgage to be delivered to the seller.

E. The false purchase price set forth in the respective Memorandum for each Transaction was that set forth under Item 16, supra, for the respective Transactions.

F. The false principal amount of the purchase money mortgage for each Transaction was that set forth under Item 17, column (iii), supra.

G. The respective false amount represented to have been paid or to be due on contract approximated 10% of the false purchase price.

27. A. Each Closing Statement was prepared by Kenneth E. Boklan.

B. Each page of the Closing Statement in the left hand lower margin of the page bore the printed legend "Kenneth E. Boklan, Attorney at Law, Melville, New York".

C. Each Closing Statement contained information with respect to substantially all of the following:

(i) A brief description of the property by acreage and its location;

(ii) The date of closing;

(iii) The persons present;

(iv) The credits to the sellers, including the purchase price and adjustments;

(v) The purchase price per acre and the number of acres acquired;

(vi) The debits for the purchaser(s), including the amount paid on contract and the aggregate amount of purchase money mortgages;

(vii) The balance due the seller at the closing;

(viii) Additional payments by purchaser(s) at the closing, including legal fees for Kenneth E. Boklan, title insurance premiums, engineering or survey fees, fees to seller's attorneys for preparation of bonds and mortgages;

(ix) A recapitualation of disbursements made in behalf of the purchaser(s) from the "Kenneth E. Boklan, Special Account";

(x) A schedule of purchase money mortgages.

D. Each Closing Statement disclosed a payment to Kenneth E. Boklan of legal fees in the approximate amount of one (1%) per cent of the purchase price, as set forth in the Closing Statement.

E. Each Closing Statement represented that the purchaser had paid on contract an amount approximately equal to ten (10%) per cent of the purchase price, as set forth in the Closing Statement.

28. In the Eight Transactions, there are an aggregate of at least 41 public investors.

29. A. All of the initial investors for each of the respective Eight Transactions were requested to execute and did execute (i) an Agreement Among Investors referred to as a Joint Venture Agreement or (ii) a document adopting the Joint Venture Agreement.

B. Each Joint Venture Agreement for the Eight Transactions:

(1) referred to the parties to the respective agreements collectively as "Joint Venturers";

(2) referred to the subject of the agreement as a "Joint Venture" either (i) "for the purpose of operating and controlling a joint venture with regard to" the real property described in a schedule annexed to the agreement, or (ii) a

PLAINTIFFS' REQUEST FOR ADMISSIONS UNDER RULE 36

Joint Venture "in the purchase and acquisition" of the real property described in a schedule annexed to the agreement;

(3) expressly provided that the property shall be held by the investors as tenants in common and not as partners;

(4) expressly provided that all profits, losses, costs, disbursements and charges shall be shared or borne by the parties in proportion to their interests in the Venture;

(5) expressly provided that

(i) no salary, commissions, management fee or other compensation shall be paid to any Joint Venturer for any service rendered to the Joint Venture or in connection with any of its business or property, except as expressly agreed therein;

(ii) no Joint Venturer shall have the right or power to sell, assign, hypothecate, mortgage or otherwise transfer or encumber his undivided interest in the venture without the prior written consent thereto of the other Joint Venturers;

(iii) no Joint Venturer, either directly or indirectly, shall make application to, or petition any court for partition of the venture;

(iv) each Joint Venturer shall pay the income taxes which shall be applicable to monies or proceeds paid or credited to him pursuant to the Joint Venture evidenced by the agreement and no Joint Venturer shall be liable to any extent for such taxes incurred by any other Joint Venturer;

(v) all monies contributed by each Joint Venturer and all monies received by or in behalf of each Joint Venturer shall be treated and regarded as trust funds for the performance by each Joint Venturer of his respective obligations thereunder;

(vi) Eugene Rodin either alone or together with B. Rodin or Vogel shall be in control of the management and final disposition of the real property whether such disposition shall result from the sale of

the contract right or from the sale of a fee interest and that Eugene Rodin* shall determine the sale price and manner of payment with regard to the sale of the contract right or fee interest;

(vii) the parties agree to make such payment as shall be required in direct proportion to their interest and equity in the Joint Venture within fifteen (15) days of receipt of notice of the requirement of such payment to Eugene Rodin, or to such person or party as Eugene Rodin shall designate.

C. Payments of initial capital by public investors were delivered to one or more of the individual defendants, usually by checks payable to the order of Kenneth E. Boklan.

30. Payments required subsequent to the initial capital contributions were paid to Kenneth E. Boklan.

31. All payments for capital contributions and for disbursements and expenses for the Eight Transactions were

* either alone or together with B. Rodin or Vogel.

deposited by KENNETH E. BOKLAN in an account entitled "KENNETH E. BOKLAN, SPECIAL" Account #41 481 701 at the Bankers Trust Company, Farmingdale, New York.

32. A. The 109 Transaction is an assemblage of three parcels conveyed in March and June 1970, as follows:

(i) a conveyance of some 22 acres by Frank A. Penater and Margaret J. Penater to Tamerlaine Properties, Inc. for $100,000, subject to a $75,000 purchase money mortgage due in March 1977.

(ii) a conveyance of some 43 acres by Charles Hodges and Flora Hodges to Samuel L. Grimes for $35,000, subject to $24,850 purchase money mortgage due in June, 1975.

(iii) a conveyance of some 44 acres from Florence N. Getzov to Kenneth E. Boklan as nominee for Alfred Meyers for $99,034.00, subject to a $75,000.00 purchase money mortgage.

B. At or about the time of the conveyance by the Hodges to Grimes, referred to in A(ii), Samuel L. Grimes had been or was then the law partner of Kenneth E. Boklan.

C. In November, 1970 Tamerlane Properties, Inc., Seymour Grimes and Alfred Meyers conveyed the three parcels

(referred to at A(i), (ii) and (iii) to Hy Pogash and Burton Bronsther ("P and B") for a total consideration of $638,655.00, subject to mortgages totalling $448,710.00, as follows:

| | |
|---|---|
| (i) The Tamerlane Properties, Inc. mortgage to the Penater (A(ii) supra) | $ 75,000.00 |
| (ii) the Grimes mortgage to the Hodges (A(ii) supra) | 24,850.00 |
| (iii) the Myers mortgage to Getzov (A(iii) supra) | 35,000.00 |
| (iv) a mortgage by P and B to Kenneth E. Boklan | 155,340.00 |
| (v) a mortgage by P and B to Alfred Meyers | 53,920.00 |
| (vi) another mortgage by P and B to Alfred Meyers | 106,600.00 |

D. From March and June 1970 to November 1970 the selling price for the parcels of the 109 Transaction increased from $234,034.00 to $638,655.00 or 272%.

PLAINTIFFS' REQUEST FOR ADMISSIONS UNDER RULE 36

E. On or about July 6, 1971, P and B conveyed the parcels of the 109 Transaction to Eugene Rodin as Nominee for the investors in the 109 Transaction for the sum of $951,455.00.

F. Initially Eugene Rodin had executed An Agreement Among Investors for the 109 Transaction wherein he agreed to invest $95,000.00, or 25,675%.

G. Without the knowledge of the Public Investors who initially signed the agreement among the investors, Eugene Rodin sold his interest to five additional Public Investors.

33. Vogel has assigned his interests in one or more of the Eight Transactions to other public investors.

34. The excess cash (before expenses) acquired from the Public Investors by the Promoter Defendants in connection with the Eight Transactions are as follows:

| | Known Cash Believed Raised from Public Investors at or Prior to Closing or Shortly Thereafter[1] | Cash Required (Before Expenses) for Acquisition, i.e., Pd. on Contract & to Seller at Closing | Excess Cash (Before Expenses) |
|---|---|---|---|
| 102 Transaction | $160,000 | $127,557[2] | $32,443 |
| 109 " | 312,500 | 220,000 | 92,500 |

PLAINTIFFS' REQUEST FOR ADMISSIONS UNDER RULE 36

| | | | | |
|---|---|---|---|---|
| 150 | " | 242,000 | 245,000[3] | ( 3,000) |
| 158 | " | 117,200 | 120,000[3] | ( 2,800) |
| 196 | " | 92,500 | 76,658[2] | 15,842 |
| 222 | " | 345,000 | 231,200[3] | 113,800 |
| 231 | " | 110,000 | 100,456[2] | 9,544 |
| 250 | " | 127,500 | 101,000[3] | 26,500 |
| | | $1,506,700 | $1,221,871 | $284,829 |

1 There may have been more cash raised.
2. As per Seller's Closing Statement.
3 Approximate estimated figures.

35. The expenses charged to the Joint Venturers as represented in the Closing Statements prepared by Boklan and submitted to the public investors are as follows:

| Transaction | Attorney Fees to Boklan | To Chicago Title Ins. Company (Including Gratuities to Closer | Egineering and Supervising | Seller's Attorneys for Purchase Money Mortgages | Miscellaneous |
|---|---|---|---|---|---|
| 102 | $ 6,100 | $ 1,871 | $2,300 (Hulse) | $ 175 | --- |
| 109 | 10,450 | 2,918 | --- | 125 | |
| 150 | 11,250 | 2,760 | 2,850 (Hasen) | 1,000 | |

PLAINTIFFS' REQUEST FOR ADMISSIONS UNDER RULE 36

| | | | | | |
|---|---|---|---|---|---|
| 158 | 5,300 | 1,538 | 4,100 (Hulse) | --- | |
| 196 | 3,920 | 1,871 | 4,500 (Phelps) | 200 | |
| 222 | 13,350 | 7,108 | --- | 1,000 | $12,000 (Listing fee for Broker) |
| 231 | 5,040 | 908 | --- | --- | $2,428 (Taxes) |
| 250 | 5,750 | 1,750 | --- | 250 | --- |
| TOTALS | $61,160 | $20,724* | $13,750 | $2,750 | $14,428 |

* Boklan or the other Promoter Defendants never accounted for the commissions, upon information and belief, received from the title company.

Dated: New York, N.Y.
November 11, 1974

Yours, etc.,

LIPPER, LOWEY & DANNENBERG

By _____

747 Third Avenue
New York, N.Y. 10017
(212) 759-1504
-and-
BERNARD S. KANTON, Esq.
310 Madison Avenue
New York, N.Y.

Attorneys for Plaintiffs

TO: ROGERS & WELLS
Attorneys for Defendants
200 Park Avenue
New York, N.Y. 10017

RESPONSE OF DEFENDANTS SEYMOUR VOGEL, *ET AL.*, TO PLAINTIFFS' REQUEST FOR ADMISSIONS.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - -x

KARL NEIMAND, et al, :

Plaintiffs, :

74 Civil 970 (EN)

-against- :

MENDON PROPERTIES, INC., et al, :

Defendants. :

- - - - - - - - - - - - - - - - - - - - -x

RESPONSE OF DEFENDANTS SEYMOUR VOGEL, ET AL. TO PLAINTIFFS' REQUEST FOR ADMISSIONS

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, the undersigned defendants respond to plaintiffs' request for admissions as follows:

1. State that they are without knowledge or information sufficient to form a belief as to the truth of the statements set forth in Paragraphs 1 and 2 of plaintiffs request for admissions except admit that the closings of title in the 150, 109 and 222 transactions occurred at or about the time set forth therein and that defendant Kenneth E. Boklan acted as attorney for the respective purchasers in those transactions.

RESPONSE OF DEFENDANTS SEYMOUR VOGEL, ET AL., TO PLAINTIFFS' REQUEST FOR ADMISSIONS

2. Upon information and belief, admit the statements contained in Paragraph 3 of plaintiffs' request for admissions.

3. Deny the statements set forth in Paragraph 4 of plaintiffs' request for admissions except admit that since at least January, 1971, defendant Seymour Vogel has been a real estate broker licensed by the State of New York, and that he has used the name Sy Vogel Associates.

4. Deny the statements set forth in Paragraph 5 of plaintiffs' request for admissions.

5. Deny the statements set forth in Paragraphs 6 and 8 of plaintiffs' request for admissions except admit so much of said requests as are admitted by the defendant Kenneth E. Boklan, to whom each such request refers.

6. Object to Paragraph 7 of plaintiffs' request for admissions on the ground that said paragraph calls for an admission or denial in respect of the contents of written documents; that under the Best Evidence Rule, such evidence is inadmissible until a preliminary showing is made that the documents themselves are not available; and that plaintiffs have made no such showing.

7. Deny the statements contained in Paragraph 9 of plaintiffs' request for admissions, except admit that

RESPONSE OF DEFENDANTS SEYMOUR VOGEL, ET AL., TO PLAINTIFFS' REQUEST FOR ADMISSIONS

defendant Seymour Vogel controls each of the undersigned defendant corporations, as well as Portgage Properties, Inc. and that Group Administrators Corp. and Portgage Properties, Inc. were formed in New York at or about the dates set forth in Paragraph 9 of plaintiffs' request for admissions; and state that they are without knowledge or information sufficient to form a belief as to the truth of the statements in Paragraph 9 insofar as relates to defendant Eugene Rodin and members of his immediate family with respect to the remaining corporate defendants.

8. State that they are without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraphs 10 and 11 of plaintiffs' request for admissions, except deny the statements contained in Paragraph 11 insofar as they relate to defendant Seymour Vogel.

9. Deny the statements contained in Paragraph 12 of plaintiffs' request for admissions except admit that Bruce Rodin is the son of Eugene Rodin; that during a portion of 1971, Bruce Rodin was licensed under defendant Seymour Vogel, as a real estate salesman at 534 Broad Hollow Road, Melville, N. Y. and, upon information and belief, that since 1971, Bruce Rodin has been licensed as a real estate broker

RESPONSE OF DEFENDANTS SEYMOUR VOGEL, ET AL., TO PLAINTIFFS' REQUEST FOR ADMISSIONS

under his own name and that he has had an office at 505 Northern Boulevard, Great Neck, N. Y. 10121.

10. State that they are without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraph 13 of plaintiffs' request for admissions except deny such statements insofar as they relate to defendant Seymour Vogel.

11. State that they are without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraphs 14 and 15 of plaintiffs' request for admissions.

12. Object to Paragraphs 16, 17 and 18 of plaintiffs' request for admissions on the ground that said paragraphs call for an admission or denial in respect of the contents of written documents; that under the Best Evidence Rule, such evidence is inadmissible unless a preliminary showing is made that the documents themselves are not available; and that plaintiffs have made no such showing.

13. State that they are without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraphs 19A and 19B of plaintiffs' request for admissions.

14. State that they are without knowledge or information sufficient to form a belief as to the truth of the

RESPONSE OF DEFENDANTS SEYMOUR VOGEL, ET AL., TO PLAINTIFFS' REQUEST FOR ADMISSIONS

statements contained in Paragraph 19C of plaintiffs' request for admissions except deny that any monies were converted to the benefit and use of the undersigned defendants but aver that various monies were paid to Seymour Vogel from time to time in satisfaction of interest payments to which he or corporations in which he had an interest were entitled.

15. Deny the statements contained in Paragraphs 20A, 20B and 20C of plaintiffs' request for admissions except admit that Tamerlane Properties Inc. holds a mortgage in the principal amount of $107,085; that on or about November 25, 1970, a mortgage in the principal amount of $155,340 was issued in the name of Kenneth E. Boklan; that said mortgage was assigned on or about February 10, 1971 to defendant Byerly Properties Inc. (Byerly) and that Byerly, on or about February 10, 1971, assigned said mortgage to Sackman-Gilliland Corporation and, upon information and belief, that one Samuel L. Grimes, a former law partner of defendant Kenneth E. Boklan, holds or at one time held a mortgage in the amount of $53,080 on said property.

16. State that they are without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraphs 21 and 23 of plaintiffs' request for admissions.

RESPONSE OF DEFENDANTS SEYMOUR VOGEL, ET AL., TO PLAINTIFFS' REQUEST FOR ADMISSIONS

17. Deny the statements contained in Paragraph 22 of plaintiffs' request for admissions.

18. State that they are without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraphs 24 and 25 of plaintiffs' request for admissions, except deny that any of the undersigned defendants transmitted through the use of the mails to any "public investors" any of the documents referred to in Paragraph 24 or that defendant Seymour Vogel received any payments of capital contributions and expenses from said "investors" as set forth in Paragraph 25.

19. State that they are without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraph 26A of plaintiffs' request for admissions.

20. Object to Paragraphs 26B and 26C of plaintiffs' request for admissions on the ground that said paragraphs call for an admission or denial in respect of the contents of written documents; that under the Best Evidence Rule, such evidence is inadmissible unless a preliminary showing is made that the documents themselves are not available; and that plaintiffs have made no such showing.

RESPONSE OF DEFENDANTS SEYMOUR VOGEL, ET AL., TO PLAINTIFFS' REQUEST FOR ADMISSIONS

21. Object to Paragraphs 26D, E, F and G on the ground that said paragraphs call upon defendants to admit or deny conclusions of fact and/or law.

22. State that they are without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraph 27A of plaintiffs' request for admissions.

23. Object to Paragraphs 27B, C, D and E on the ground that said paragraphs call for an admission or denial in respect of the contents of written documents; that under the Best Evidence Rule, such evidence is inadmissible unless a preliminary showing is made that the documents themselves are not available; and that plaintiffs have made no such showing.

24. State that they are without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraph 28 of plaintiffs' request for admissions.

25. State that they are without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraph 29A of plaintiffs' request for admissions insofar as relates to requests to execute the agreements therein referred to and object to the remainder

of Paragraph 29A on the ground that said statements call for an admission or denial in respect of the contents of written documents; that under the Best Evidence Rule, such evidence is inadmissible unless a preliminary showing is made that the documents themselves are not available; and that plaintiffs have made no such showing.

26. Object to the statements contained in Paragraphs 29B and all sub-divisions thereof of plaintiffs' request for admissions on the ground that said paragraphs call for an admission or denial in respect of the contents of written documents; that under the Best Evidence Rule, such evidence is inadmissible unless a preliminary showing is made that the documents themselves are not available; and that plaintiffs have made no such showing.

27. State that they are without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraph 29C of plaintiffs' request for admissions excep deny that any payments referred to therein were delivered to defendant Seymour Vogel.

28. State that they are without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraphs 30 and 31 of plaintiffs' request for admissions.

RESPONSE OF DEFENDANTS SEYMOUR VOGEL, ET AL., TO PLAINTIFFS' REQUEST FOR ADMISSIONS

29. Deny that the statements in Paragraphs 32A, B, C, D and E and each of the sub-divisions thereof except admit that in March 1970, a portion of the property referred to in Paragraph 1 of plaintiffs' request for admissions and identified as the 109 Transaction was conveyed by Frank R. Penetar and Margaret J. Penetar to Tamerlane Properties, Inc. for $100,000; that a portion of said property was conveyed by Charles Hodges and Flora Hodges to Samuel L. Grimes for $35,000; that a portion of said property was conveyed by Florence N. Getzov to Kenneth E. Boklan as nominee for Alfred Myers for $99,034; and that in November, 1970, Tamerlane Properties, Inc., Samuel L. Grimes and Alfred Myers conveyed portions of said property to Hy Pogash and Burton Bronsther subject to various mortgages.

30. Object to the statements contained in Paragraph 32F of plaintiffs' request for admissions on the ground that such statements call for an admission or denial in respect of the contents of a written document; that under the Best Evidence Rule, such evidence is inadmissible unless a preliminary showing is made that the documents themselves are not available; and that plaintiffs have made no such showing.

31. State that they are without knowledge or information sufficient to form a belief as to the truth of the

RESPONSE OF DEFENDANTS SEYMOUR VOGEL, ET AL., TO PLAINTIFFS' REQUEST FOR ADMISSIONS

statements contained in Paragraph 32G of plaintiffs' request for admissions.

32. Deny the statements contained in Paragraph 33 of plaintiffs' request for admissions.

33. State that they are without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraph 34 of plaintiffs' request for admissions except deny said statements insofar as they relate to the undersigned defendants.

34. Object to the statements contained in Paragraph 35 of plaintiffs' request for admissions on the ground that said paragraph calls for an admission or denial in respect of the contents of written documents; that under the Best Evidence Rule, such evidence is inadmissible unless a preliminary showing is made that the documents themselves are not available; and that plaintiffs have made no such showing.

The undersigned defendants further state that as to those matters upon which they lack knowledge or information sufficient to form a belief as to the truth of the statements contained in the request for admissions, they

have made reasonable inquiry, and that the information known or readily obtainable to them is insufficient to enable them to admit or deny such statements.

SEYMOUR VOGEL
MENDON PROPERTIES, INC.
PARKHAM DEVELOPMENT CORP.
BYERLY PROPERTIES, INC.
GROUP ADMINISTRATORS CORP.
TAMERLANE PROPERTIES, INC.
COLE-HUNT DEVELOPMENT CORP.
SY VOGEL ASSOCIATES

By _____
Seymour Vogel

RESPONSE OF DEFENDANT KENNETH E. BOKLAN TO PLAINTIFFS' REQUEST FOR ADMISSIONS.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - x

KARL NEIMAND, et al., :

Plaintiffs, :

-against- : 74 Civil 970 (EN)

MENDON PROPERTIES, INC., et al., :

Defendants. :

- - - - - - - - - - - - - - - - - - - - - - x

RESPONSE OF DEFENDANT KENNETH E. BOKLAN TO PLAINTIFFS' REQUEST FOR ADMISSIONS

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, defendant Kenneth E. Boklan responds to plaintiffs' request for admissions as follows:

1. States that he is without knowledge or information sufficient to form a belief as to the truth of the statements set forth in Paragraph 1 of plaintiff's request for admissions except admits that the closings of title in the transactions set forth in Paragraph 1 occurred at or about the time set forth therein.

2. Admits the statements contained in Paragraphs 2 and 3 of plaintiffs' request for admissions.

RESPONSE OF DEFENDANT KENNETH E. BOKLAN TO PLAINTIFFS' REQUEST FOR ADMISSIONS

3. Denies the statements set forth in Paragraph 4 of plaintiffs' request for admissions except admits, upon information and belief, that since at least January 1971 defendant Seymour Vogel has been a real estate broker licensed by the State of New York, and that he has used the name Sy Vogel Associates.

4. Denies the statements set forth in Paragraph 5 of plaintiffs' request for admissions.

5. Admits the statements contained in Paragraph 6 of plaintiffs' request for admissions, except denies that Hartwick Properties, Inc. was incorporated on December 30, 1970, the correct date being December 3, 1970.

6. Objects to Paragraph 7 of plaintiffs' request for admissions on the ground that said paragraph calls for an admission or denial in respect of the contents of written documents; that under the Best Evidence Rule, such evidence is inadmissible unless a preliminary showing is made that the documents themselves are not available; and that plaintiffs have made no such showing.

7. Denies the statements contained in Paragraph 8 of plaintiffs' request for admissions except admits that he acted as attorney in connection with the purchases referred to in Paragraph 1 of plaintiffs' request for admissions and that he received attorneys' fees aggregating in excess of $60,000.

RESPONSE OF DEFENDANT KENNETH E. BOKLAN TO PLAINTIFFS' REQUEST FOR ADMISSIONS

8. States that he is without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraph 9 of plaintiffs' request for admissions except admits that defendant Seymour Vogel controls Mendon Properties, Inc., Parkham Development Corp., Byerly Properties, Inc., Group Administrators Corp., Tamerlane Properties, Inc., Hartwick Properties, Inc., Cole-Hunt Development Corp. and Portage Properties, Inc. and that defendant Eugene Rodin and/or members of his family control Rillstone Properties, Inc. and The Godsberg Realty Corp. and that Group Administrators Corp., Portage Properties, Inc. and The Godsberg Realty Corp. were formed on or about the dates set forth in Paragraph 9.

9. States that he is without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraphs 10 and 11 of plaintiffs' request for admissions except denies the statements contained in Paragraph 11 insofar as they relate to the undersigned.

10. Denies the statements contained in Paragraph 12 of plaintiffs' request for admissions except admits upon information and belief that Bruce Rodin is the son of Eugene Rodin; that during a portion of 1971, Bruce Rodin was licensed under defendant Seymour Vogel as a real estate salesman at 534 Broad Hollow Road, Melville, N. Y., and that since

RESPONSE OF DEFENDANT KENNETH E. BOKLAN TO PLAINTIFFS' REQUEST FOR ADMISSIONS

1971 Bruce Rodin has been licensed as a real estate broker under his own name and that he has had an office at 505 Northern Boulevard, Great Neck, N. Y. 10121.

11. States that he is without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraph 13 of plaintiffs' request for admissions except denies such statements insofar as they relate to the undersigned.

12. States that he is without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraphs 14 and 15 of plaintiffs' request for admissions and objects to said paragraphs on the ground that the documents referred to therein are not sufficiently identified to enable him to respond to the request.

13. Objects to Paragraphs 16, 17 and 18 of plaintiffs' request for admissions on the ground that said paragraphs call for an admission or denial in respect of the contents of written documents; that under the Best Evidence Rule, such evidence is inadmissible unless a preliminary showing is made that the documents themselves are not available; and that plaintiffs have made no such showing.

14. Denies the statements set forth in Paragraphs 19A and 19B of plaintiffs' request for admissions except admits that at various times between June 1971 and July 1974,

RESPONSE OF DEFENDANT KENNETH E. BOKLAN TO PLAINTIFFS' REQUEST FOR ADMISSIONS

he, by use of the mails, requested the plaintiffs and/or other "public investors" in the respective transactions referred to in Paragraph 1 of plaintiffs' request for admissions to send to him payments of interest in connection with the said transactions and that such plaintiffs and other "public investors" in connection with such transactions have remitted to him payments for interest aggregating in excess of $140,000.

15. Denies the statements set forth in Paragraph 19C of plaintiffs' request for admissions except admits that various monies were paid, but avers that the sums referred to in Paragraph 19B were paid to Eugene Rodin, Seymour Vogel or Bruce Rodin from time to time in satisfaction of interest payments to which they or corporations in which they had an interest were entitled.

16. Denies the statements contained in Paragraphs 20A, 20B and 20C of plaintiffs' request for admissions except admits that Tamerlane Properties Inc. holds a mortgage in the principal amount of $107,085; that Samuel L. Grimes had been a law partner of his prior to March and June 1970; that on or about November 25, 1970, he received a mortgage as nominee in the principal amount of $155,340 on all of the real property which is the subject of the property described in Paragraph 1 hereof and identified therein as "the 109 Transaction"

RESPONSE OF DEFENDANT KENNETH E. BOKLAN TO PLAINTIFFS' REQUEST FOR ADMISSIONS

that said mortgage was assigned on or about February 10, 1971 to defendant Byerly Properties, Inc. (Byerly) and that Byerly, on or about February 10, 1971, assigned said mortgage to Sackman-Gilliland Corporation and that Samuel L. Grimes, a former law partner of the undersigned, holds or at one time held a mortgage in the amount of $53,080 on said property.

17. Objects to Paragraphs 21, 22 and 23 of plaintiffs' request for admissions on the ground that the documents therein referred to are not sufficiently identified to enable him to respond to the requests.

18. Objects to Paragraph 24 of plaintiffs' request for admissions on the ground that the documents therein referred to have not been sufficiently identified to enable him to respond to the request.

19. States that he is without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraph 25 of plaintiffs' request for admissions, except admits that between January, 1971 and December, 1973 payments of capital contributions and of expenses were transmitted by the "investors" to him, sometimes through the mails.

RESPONSE OF DEFENDANT KENNETH E. BOKLAN TO PLAINTIFFS' REQUEST FOR ADMISSIONS

20. Objects to Paragraph 26A of plaintiffs' request for admissions on the ground that the documents therein referred to are not sufficiently identified to enable him to respond to the request.

21. Objects to Paragraphs 26B and C of plaintiffs' request for admissions on the ground that said paragraphs call for an admission or denial in respect of the contents of written documents; that under the Best Evidence Rule, such evidence is inadmissible unless a preliminary showing is made that the documents themselves are not available; and that plaintiffs have made no such showing.

22. Objects to Paragraphs 26D, E, F and G on the ground that said paragraphs call upon him to admit or deny conclusions of fact and/or law.

23. Objects to Paragraph 27A of plaintiffs' request for admissions on the ground that the documents therein referred to are not sufficiently identified to enable him to respond to the request.

24. Objects to Paragraphs 27B, C, D and E on the ground that said paragraphs call for an admission or denial in respect of the contents of written documents; that under the Best Evidence Rule, such evidence is inadmissible unless a preliminary showing is made that the documents themselves are not available; and that plaintiffs have made no such showing.

RESPONSE OF DEFENDANT KENNETH E. BOKLAN TO PLAINTIFFS' REQUEST FOR ADMISSIONS

25. Denies the statements contained in Paragraph 28 of plaintiffs' request for admissions.

26. Objects to Paragraph 29A of plaintiffs' request for admissions on the ground that the documents therein referred to are not sufficiently identified to enable him to respond to the request.

27. Objects to the statements contained in Paragraph 29B and all sub-divisions thereof of plaintiffs' request for admissions on the ground that said paragraph calls for an admission or denial in respect of the contents of written documents; that under the Best Evidence Rule, such evidence is inadmissible unless a preliminary showing is made that the documents themselves are not available; and that plaintiffs have made no such showing.

28. States that he is without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraph 29C of plaintiffs' request for admissions except admits to the receipt from time to time of checks made payable to him from the "public investors".

29. Denies the statements contained in Paragraphs 30 and 31 of plaintiffs' request for admissions except admits that certain payments were made to him and such payments

were deposited by him in an account entitled "KENNETH E. BOKLAN SPECIAL" Account #41 481 701 at the Bankers Trust Company, Farmingdale, New York.

30. Denies that the statements in Paragraphs 32A, B, C, D and E and each of the sub-divisions thereof except admits that in March 1970, a portion of the property referred to in Paragraph 1 of plaintiffs' request for admissions and identified as the 109 Transaction was conveyed by Frank R. Penetar and Margaret J. Penetar to Tamerlane Properties, Inc. for $100,000; that a portion of said property was conveyed by Charles Hodges and Flora Hodges to Samuel L. Grimes for $35,000 who had been a law partner of his; that a portion of said property was conveyed by Florence N. Getzov to Kenneth E. Boklan as nominee for Alfred Myers for $99,034; that in November 1970, Tamerlane Properties, Inc., Samuel L. Grimes and Alfred Myers conveyed portions of said property to Hy Pogash and Burton Bronsther subject to various mortgages.

31. Object to the statements contained in Paragraph 32F of plaintiffs' request for admissions on the ground that such statements call for an admission or denial in respect of the contents of a written document; that under the Best Evidence Rule, such evidence is inadmissible unless a preliminary showing is made that the documents themselves are not available; and that plaintiffs have made no such showing.

RESPONSE OF DEFENDANT KENNETH E. BOKLAN TO PLAINTIFFS' REQUEST FOR ADMISSIONS

32. States that he is without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraph 32G of plaintiffs' request for admissions.

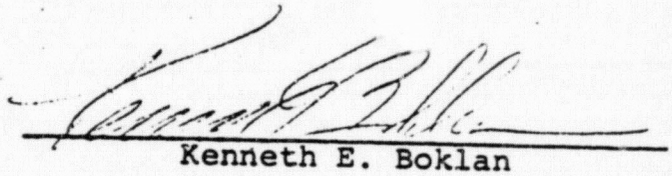
33. States that he is without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraph 33 of plaintiffs' request for admissions.

34. States that he is without knowledge or information sufficient to form a belief as to the truth of the statements contained in Paragraph 34 of plaintiffs' request for admissions except denies said statements insofar as they relate to him.

35. Objects to the statements contained in Paragraph 35 of plaintiffs' request for admissions on the ground that said paragraph calls for an admission or denial in respect of the contents of written documents; that under the Best Evidence Rule, such evidence is inadmissible unless a preliminary showing is made that the documents themselves are not available; and that plaintiffs have made no such showing.

RESPONSE OF DEFENDANT KENNETH E. BOKLAN TO PLAINTIFFS' REQUEST FOR ADMISSIONS

The undersigned further states that as to those matters upon which he lacks knowledge or information sufficient to form a belief as to the truth of the statements contained in the request for admissions, he has made reasonable inquiry, and that the information known or readily obtainable to him is insufficient to enable him to admit or deny such statements.



Kenneth E. Boklan

RESPONSE OF DEFENDANT HARTWICK PROPERTIES, INC. TO PLAINTIFFS' REQUEST FOR ADMISSIONS.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - -x

KARL NEIMAND, et al.,

Plaintiffs,

-against-

MENDON PROPERTIES, INC., et al.,

Defendants.

74 Civil 970 (EN)

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RESPONSE OF DEFENDANT HARTWICK PROPERTIES, INC. TO PLAINTIFFS' REQUEST FOR ADMISSIONS

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, defendant Hartwick Properties, Inc. responds to plaintiffs' request for admissions by adopting verbatim, as though fully set forth herein, the responses of Seymour Vogel, et al, to be filed simultaneously herewith.

ROGERS & WELLS

By _____
A Member of the Firm
200 Park Avenue
New York, N. Y. 10017
Attorneys for Defendant
Hartwick Properties, Inc.

PLAINTIFFS' AMENDED COMPLAINT AND INTERVENORS' COMPLAINT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

| | |
|---|---|
| KARL M. NEIMAND, SYDNEY JARKOW, ARTHUR A. INGRAM, SIDNEY MISHCON, MORRIS GUDWIN, and EDWARD A. PALLACK, | |
| Plaintiffs, | 74 Civ. 970 (EN) |
| -and- | |
| GEORGE COOPER, LEONARD MILTON, DOROTHY LEVESS, BERNARD S. KANTON, VAN BAALEN HEILBRUN & CO., INC., EMPLOYEES PROFIT SHARING PLAN AND TRUST, MORTIMER EHRMAN, WILLIAM EHRMAN, SAMUEL EHRMAN, RICHARD EHRMAN, JACK ORLOFF, ALEXANDER DAVIS, DAVID HERSHBERG, EVA GLASS, and MELVIN HIRSCHBERG, | PLAINTIFFS' AMENDED COMPLAINT AND INTERVENORS' COMPLAINT |
| Plaintiff-Intervenors, | |
| -against- | |
| MENDON PROPERTIES, INC., PARKHAM DEVELOPMENT CORP., SEYMOUR VOGEL, KENNETH E. BOKLAN, EUGENE RODIN, BRUCE RODIN, WILLIAM N. BIRNBAUM, SY VOGEL ASSOCIATES, RILLSTONE PROPERTIES, INC., GODSBERG REALTY CORP., BYERLY PROPERTIES, INC., GROUP ADMINISTRATORS CORP., TAMERLANE PROPERTIES, INC., HARTWICK PROPERTIES, INC., COLE-HUNT DEVELOPMENT CORPORATION, BERVO ASSOCIATES, INC., ARTHUR VOGEL, SAMUEL L. GRIMES and SYLVIA RODIN, | |
| Defendants. | |

Plaintiffs and Plaintiff-Intervenors (hereinafter referred to collectively as "Plaintiffs") by their respective

undersigned attorneys, complaining of the defendants, allege upon information and belief, except as to those allegations of paragraphs "3", "8", "9", "10", "21", "22", "25", "33", "51", "56", "59", "62", "63", "64", "67", "78", "79", "90", "91", "93" and "94". which as they relate to a respective plaintiff are alleged upon the knowledge of that respective plaintiff, but upon information and belief as to the remaining plaintiffs, that:

## JURISDICTION AND VENUE

1. This action arises out of violations of Sections 5, 12(1), 12(2) and 17(a) of the Securities Act of 1933, as amended, 15 U.S.C. §77e, 1(1), and 1(2) q(a), (hereinafter referred to as the "Securities Act"), Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78j(b) (hereinafter referred to as the "Exchange Act"), Securities and Exchange Commission ("S.E.C.") Rule 10b-5, principles of common law and equity of the State of New York for conversion, fraud and breach of fiduciary obligations and under the statutes of the State of New York.

2. The jurisdiction of this Court is founded upon Sections 22(a) of the Securities Act, 15 U.S.C. §77v, Section 27 of the Exchange Act, 15 U.S.C. §78aa, and upon principles of pendent jurisdiction, all of the counts herein alleged arising from a common nucleus of operative facts and a common fraudulent and deceitful course of conduct.

3. Plaintiffs are all citizens of the State of New York residing within the Eastern District of New York, with the exception of plaintiffs Mortimer Ehrman, Richard Ehrman, Samuel Ehrman, William Ehrman, David Hershberg and Jack Orloff who reside outside said District.

4. The individual defendants are all citizens of the State of New York residing within the Eastern District of New York.

5. The corporate defendants are all New York corporations, all having an office within the Eastern District of New York.

6. Many of the acts and transactions constituting or in furtherance of the violations alleged occurred and are occurring within the Eastern District of New York.

THE PARTIES - THE PLAINTIFFS

7. Plaintiffs are investors under investment contracts in the beneficial ownership of one or more of the following parcels of undeveloped real estate located in the State of New Jersey:

(a) 150.491 acres in Winslow Township, Camden County, New Jersey, with title acquired in the name of the defendant Eugene Rodin as of June 29, 1971. ("the 150 Transaction").

(b) 109.05 acres in Winslow Township, Camden County, New Jersey, with title acquired in the name of the defendant Kenneth E. Boklan as of July 6, 1971. ("the 109 Transaction").

(c) 222.386 acres in Winslow Township, Camden County, New Jersey, with title being acquired in the name of the defendant Hartwick Properties, Inc. as of January 28, 1972. ("the 222 Transaction").

(d) 101.96 acres of Hope Township, Warren County, New Jersey, in the name of the defendant Bruce Rodin as of May 16, 1972. (the "102 Transaction").

(e) 158.31 acres in Hope Township, Warren County, New Jersey, in the name of the defendant Godsberg Realty Corp. as of August 17, 1972. ("the 158 Transaction").

(f) 231.82 acres in the Township of Frelinghuysen, Warren County, New Jersey, with title being acquired in the name of defendant Eugene Rodin, as of November 10, 1972. ("the 231 Transaction").

(g) 250 acres in Independence Township, Warren County in the name of the defendant Bruce Rodin as of February 9, 1973. ("the 250 Transaction").

(h) 196.955 acres in Allamuchy Township, Warren County, New Jersey, with title being acquired in the name of Eugene Rodin as of July 30, 1973. ("the 196 Transaction").

These eight transactions are sometimes hereinafter referred to collectively as the ("Eight Transactions").

8. In connection with the purchase of their respective investments in the Eight Transactions, plaintiffs paid to certain of the individual defendants the following capital ("cash paid") aggregating in excess of $1,000,000 and received an agreed pro rata interest:

Plaintiff

| Karl M. Neimand | Cash Paid | Agreed Pro Rata Interest |
|---|---|---|
| 102 Transaction | $ 25,000 | .1351351 |
| 158 Transaction | 10,000 | .0853242 |
| 196 Transaction | 45,000 | .39473 |
| 222 Transaction | 100,000 | .2380952 |
| 231 Transaction | 25,000 | .185185 |
| 250 Transaction | 60,000 | .3934 |
| | $265,000 | |

PLAINTIFFS' AMENDED COMPLAINT AND INTERVENORS' COMPLAINT

| Arthur A. Ingram | | |
|---|---|---|
| 109 Transaction | $ 25,000 | .067568 |
| 158 Transaction | 25,000 | .2133105 |
| 196 Transaction | 12,500 | .10665 |
| 250 Transaction | 12,500 | .0820 |
| | $ 75,000 | |

| Plaintiff | | |
|---|---|---|
| Edward A. Pallack | Cash Paid | Agreed Pro Rata Interest |
| 102 Transaction | $ 36,000 | .1945946 |
| 222 Transaction | 30,000 | .0714285 |
| 250 Transaction | 15,000 | .0984 |
| | $ 81,000 | |

| Sydney Jarkow | | |
|---|---|---|
| 109 Transaction | $ 25,000 | .067568 |

| Sidney Mishcon | Cash Paid | Agreed Pro Rata Interest |
|---|---|---|
| 222 Transaction | $ 100,000 | .2380952 |

| Dorothy Levess | | |
|---|---|---|
| 231 Transaction | $ 25,000 | .185185 |

PLAINTIFFS' AMENDED COMPLAINT AND INTERVENORS' COMPLAINT

| | | |
|---|---|---|
| **George Cooper** | | |
| 150 Transaction | $ 15,000 | .0621414 |
| 158 Transaction | 20,000 | .1706484 |
| 231 Transaction | 15,000 | .11111 |
| 250 Transaction | 15,000 | .0984 |
| | $ 65,000 | |
| **Morris Gudwin** | | |
| 109 Transaction | 15,000 | .040541 |
| 150 Transaction | 25,000 | .103569 |
| | $ 40,000 | |
| **Bernard S. Kanton** | | |
| 109 Transaction | $ 75,000 | .202703 |
| 222 Transaction | 75,000 | .1785714 |
| | $ 150,000 | |

| **Plaintiff** | **Cash Paid** | **Agreed Pro Rata Interest** |
|---|---|---|
| **Leonard Milton** | | |
| 109 Transaction | $ 25,000 | .067568 |
| **Van Baalen Heilbrun & Co., Inc., Profit Sharing Plan and Trust** | $ 12,000 | .0497132 |

PLAINTIFFS' AMENDED COMPLAINT AND INTERVENORS' COMPLAINT

| | | |
|---|---|---|
| **William Ehrman, Samuel Ehrman and Richard Ehrman** | | |
| 231 Transaction (in aggregate) | $ 20,000 | .148148 |
| William Ehrman, Samuel Ehrman, Richard Ehrman and Mortimer Ehrman | | |
| 150 Transaction (in aggregate) | $ 25,000 | .103569 |
| David Hershberg | | |
| 150 Transaction | $ 5,000 | .020714 |
| Melvin Hirschberg | | |
| 102 Transaction | $ 24,000 | .1351351 |
| 222 Transaction | 20,000 | .047619 |
| | $ 44,000 | |
| Alexander Davis | | |
| 109 Transaction | $ 15,000 | .040541 |

| Plaintiff | Cash Paid | Agreed Pro Rata Interest |
|---|---|---|
| Jack Orloff | | |
| 150 Transaction | $ 25,000 | .103569 |
| Eva Glass | | |
| 150 Transaction | 15,000 | .0621414 |

9. In addition, the plaintiffs have each paid substantial additional sums to one or more of the defendants, allegedly for real estate taxes, interest on mortgages and for fees and expenses and other charges in connection with the Eight Transactions. These sums aggregate in excess of $300,000; certain of the defendants are continuing to make demands for additional monies from plaintiffs allegedly for these expenses.

10. In addition, plaintiff Karl Neimand in 1972 paid $45,000 to Eugene Rodin and Kenneth Boklan for an alleged investment in real estate on Long Island.

THE PARTIES - THE DEFENDANTS

11. Defendant Eugene Rodin is a physician licensed to practice medicine in the State of New York, and since 1966 has resided on Old House Lane, Sands Point, New York, where he presently resides with his wife, Sylvia Rodin. For the past decade or more, instead of practicing his profession, Eugene Rodin has engaged in real estate promotion, principally by assembling undeveloped acreage for resale within a period of two to three years, and inducing members of the public to invest with him in connection with his real estate ventures, upon the representation among others, that he purchases participations with them.

12. Defendant Bruce Rodin is the son of Eugene Rodin; during 1971 Bruce Rodin was a licensed real estate salesman associated with the defendants Seymour Vogel and Sy Vogel Associates at th office of these defendants at 534 Broad Hollow Road, Melville, New York; at all times since 1971 Bruce Rodin has been licensed under the laws of the State of New York as a real estate broker under his own name, with an office at 505 Northern Blvd., Great Neck, New York 10121.

13. Defendant Seymour Vogel ("Vogel") is a real estate broker licensed under the laws of the State of New York; defendant Sy Vogel Associates ("SVA") is a business name owned and used by Vogel in his real estate business. For the past decade or more Vogel has engaged principally in real estate promotion and investing, inducing members of the public to invest with him in connection with his real estate investments and deals. Defendant Arthur Vogel is the brother of Vogel who acts as the nominee of Vogel at his bidding and instructions.

14. Defendant Kenneth E. Boklan ("Boklan") is an attorney licensed to practice in the State of New York, and at all relevant times herein has acted as the attorney for Eugene Rodin, Bruce Rodin, Vogel and each of the defendant corporations. During 1968, 1969, 1970 and 1971 he practiced law as a partnership with defendant Samuel L. Grimes under the name of Grimes & Boklan at

501-503 Hauppauge Road, Smithtown, New York(with an address also P.O. Box 545, Smithtown, New York 11787), which firm was also the attorneys for Vogel and Eugene Rodin.

15. Defendant William Birnbaum ("Birnbaum") is an attorney licensed to practice law in the State of New York and he together with other persons have assisted, aided and abetted the wrongs herein alleged in connection with one or more of the aforesaid transactions. He has also acted as the attorney for Vogel or for persons investing with him including one Alfred Meyers, Burton Bronsther and Hy Pogash. Birnbaum has acted as an officer of Parkham Development Corp. and/or one or more of the other defendant corporations.

16. Boklan, either individually or with his former law partner Samuel L. Grimes, is the attorney who incorporated each of the following defendant corporations:

| Defendant Corporations | Date and State of Incorporation |
|---|---|
| Tamerlane Properties, Inc. | August 12, 1968 - New York |
| Byerly Properties, Inc. | April 11, 1969 - New York |
| Parkham Development Corp. | October 28, 1970 - New York |
| Hartwick Properties, Inc. | December 3, 1970 - New York |
| Mendon Properties, Inc. | March 1, 1971 - New York |
| Rillstone Properties, Inc. | October 3, 1972 - New York |
| Cole-Hunt Development Corp. | December 11, 1972 - New York |

PLAINTIFFS' AMENDED COMPLAINT AND INTERVENORS' COMPLAINT

17. A. At all relevant times between August 1968 and January 1975, Vogel controlled and presently still controls (i) the defendants Tamerlane Properties, Inc., Byerly Properties, Inc., Parkham Development Corp., Hartwick Properties, Inc., Mendon Properties Inc., Cole-Hunt Development Corp., and (ii) the defendants, Group Administrators Corp., (incorporated November 3, 1971), and Bervo Associates Inc. (incorporated September 17, 1970). At various times between August 1968 and January 1975 Boklan, Eugene Rodin and Vogel were the principal officers and directors of these defendant corporations.

B. At all relevant times between January 1972 and January 1975 defendants Eugene Rodin, Bruce Rodin and Sylvia Rodin controlled and presently still control the defendant corporations, Godsberg Realty Corp. (incorporated on January 7, 1972) and Rillstone Properties Inc. (incorporated October 3, 1972). Prior to January 1975 substantially all of the stock in each of these corporations were beneficially owned by Eugene Rodin and/or Sylvia Rodin; at various times between January 1972 and January 1975 Boklan, Eugene Rodin, Bruce Rodin, and Sylvia Rodin were the principal officers and directors of these corporations.

C. At all relevant times Vogel and/or Eugene Rodin dominated and exercised a controlling influence over each of the

defendant corporations and over the defendants Boklan, Bruce Rodin, Arthur Vogel, and Samuel L. Grimes.

18. Defendant Cole-Hunt Development Corporation at all relevant times in 1973 and 1974 was and presently is the corporate vehicle by which Eugene Rodin and Vogel intended and presently intend to develop in common developments the real estate of the 150 Transaction, 109 Transaction, 222 Transaction and of the 102 Transaction and 158 Transaction, among others, for their own personal benefit.

ADDITIONAL FACTS UPON
WHICH THE PLAINTIFFS'
CLAIMS ARE FOUNDED

19. Eugene Rodin, Bruce Rodin, Vogel and Boklan (hereinafter sometimes collectively referred to as "the Defendant Promoters") organized, promoted, sold, acquired, managed and continue to manage the Eight Transactions enumerated in paragraph 7 hereof.

20. Eugene Rodin was the principal moving force in connection with the Eight Transactions; it was he with one or more of the other Defendant Promoters who on behalf of the plaintiffs selected the real estate parcels and negotiated the terms of their acquisition; all contracts of purchase for the Eight Transactions were executed by one or more of the Defendant Promoters individually or in the name of one of the defendant corporations through

which the Defendant Promoters acted; by express agreement of the investors , Eugene Rodin either alone or acting together with Vogel or with Bruce Rodin was given control over the management, development and final disposition of the real estate of the Eight Transactions; Eugene Rodin directed the plaintiffs as to whom they should make payments for their investments and payments of their pro rata share of carrying charges for the real estate.

21. Each of the plaintiffs in connection with their investments relied upon Eugene Rodin and/or Bruce Rodin and it was with them that the plaintiffs placed their trust.

22. Eugene Rodin directed the plaintiffs to make payments to Boklan; between 1971 and 1975 Boklan received from the plaintiffs upon the instructions of Eugene Rodin in excess of $1.4 million dollars for which there has never been an accurate and truthful accounting.

23. The vehicles for each of the investments for the Eight Transactions were separate written agreements dated from June 29, 1971 to October 31, 1972, described as "Agreements Among Joint Venturers" ("Agreements").

24. A. All of the Agreements were drafted and authored by Boklan under the direction of and with the approval and acquiescence of the defendants Eugene Rodin, Vogel and Bruce Rodin, and were substantially identical in their substantive provisions.

B. To each Agreement was annexed (i) a description of the real estate being acquired (or acquired), (ii) a schedule listing the names and addresses of the investors and the dollar amounts and percentage interests of their respective capital contributions, and (iii) a document entitled "Memorandum of Contract."

C. Each of the Agreements referred to the parties collectively as "Joint Venturers"; referred to the subject of the Agreement as a "Joint Venture", reciting either (i) it was for the purpose of operating and controlling a joint venture with regard to the real property described in the schedule annexed or (ii) it was a joint venture "in the purchase and acquisition" of the real property described in an annexed schedule.

D. Each Agreement expressly provided that the real property shall be held by the investors as tenants in common and not as partners and expressly disclaimed the formation of a general partnership.

E. Each Agreement expressly provided that all profits, losses, costs, disbursements, and charges shall be shared or borne by the parties in proportion to their respective interests in the venture; that the venture shall not terminate upon death, bankruptcy, insanity or incompetency of a joint venturer, but that the venture shall continue.

F. Each Agreement further expressly provided:

(i) that no salary, commissions, management fee or other compensation shall be paid to any joint venturer for any services rendered to the Joint Venture or in connection with any of its business or property, except as expressly agreed therein;

(ii) that no joint venturer shall have the right or the power to sell, assign, hypothecate, mortgage or otherwise transfer or encumber his undivided interest in the venture without the prior written consent thereto of the other joint venturers;

(iii) that titles to the real properties were to be held in the names of one of the Defendant Promoters or one of their corporations (the "defendant corporations"), as nominee;

(iv) that no joint venturer, either directly or indirectly, shall make application to, or petition any court for partition of the venture;

(v) that each joint venturer shall pay the income taxes which shall be applicable to moneys or proceeds paid or credited to him pursuant to the Joint Venture evidenced by the agreement and no joint venturer shall be liable to any extent for such taxes incurred by any other joint venturer; and

(vi) that all moneys contributed by each joint venturer and all moneys received by or in behalf of each joint venturer shall be treated and regarded as trust funds for the

performance by each joint venturer of his respective obligations thereunder.

G. Each Agreement for the 102, 222, and 231 Transactions provided that Eugene Rodin "shall be in control of the management and final disposition" of the real property whether such disposition shall result from the sale of the contract right or from the sale of a fee interest and that Eugene Rodin shall determine the sales price and manner of payment with regard to the sale of the contract right or fee interest; the same provision is in the Agreements for the other of the Eight Transactions, except that for the 158, 196 and 250 Transactions control is expressly vested in Eugene Rodin and Bruce Rodin; and in the 109 and 150 Transactions control is expressly vested in Eugene Rodin and Vogel.

H. Eugene Rodin is a signatory to all the Agreements. Bruce Rodin is a signatory to the Agreements for the 158, 196, 231 and 250 Transactions, and Vogel is a signatory to the Agreements for the 109 and 150 Transactions and has an undisclosed equity interest with Eugene Rodin in the 222 Transaction, among others. These defendants signed as "Joint Venturers" with the plaintiffs.

25. The plaintiffs' roles in the respective Eight Transactions in which they invested were passive; they invested

their money in common enterprises with the Defendant Promoters relying upon and expecting profits solely from the efforts of these Defendant Promoters.

26. Each of the Agreements expressly provided that no salary, commissions, management fee, or other compensation shall be paid to any Joint Venturer for any services rendered to the Joint Venture or in connection with any of its business or property unless expressly stated therein. The only compensation permitted by the express terms of the Agreements were real estate commissions to Vogel and/or Bruce Rodin in the event the real properties were sold.

27. Under the Agreements, the Defendant Promoters agreed to make the following capital contributions in connection with the Eight Transactions:

| Transaction | Defendant Promoter | Agreed Capital Contribution |
|---|---|---|
| 102 Transaction | Eugene Rodin and Bruce Rodin | $ 25,000. |
| 109 Transaction | Vogel | 57,500. |
| | Eugene Rodin | 95,000. |
| 150 Transaction | Vogel | 22,192.50 |
| | Eugene Rodin | 22,192.50 |
| 158 Transaction | Eugene Rodin and Bruce Rodin | 25,000. |
| 196 Transaction | Eugene Rodin and Bruce Rodin | 21,500. |
| 222 Transaction | Vogel and Eugene Rodin | 75,000. |

| Transaction (cont'd) | | Defendant Promoter Agreed Capital Contribution |
|---|---|---|
| | (carried forward) | $343,385 |
| 231 Transaction | Eugene Rodin and Bruce Rodin | 25,000 |
| 250 Transaction | Eugene Rodin and Bruce Rodin | 25,000 |
| | Total | $393,385. |

The said Defendant Promoters did not make these capital contributions.

28. Commencing in 1970 and continuously thereafter the Defendant Promoters acting in concert by the means and instrumentalities of interstate commerce and the use of the mails, and acting individually and through the defendant corporations and aided and abetted by others, through concert of action, arrangements, understandings, and agreements, secretly entered upon an illegal and fraudulent common course of conduct, employed devices, schemes and artifices to defraud, falsely stated material facts and omitted to state material facts necessary in order to make the statements made in light of the circumstances in which they were made not misleading, and engaged in acts and practices and a course of business which would operate and did operate as a fraud and deceit upon the plaintiffs, as hereinafter more specifically set forth.

29. The illegal and fraudulent common course of conduct and devices, schemes and artifices to defraud consisted and/or presently consist of the following overt conduct and acts:

A. At the inception of the plaintiffs' respective investments and during the course thereof the Defendant Promoters, in writing, materially misrepresented, overstated and falsely communicated to the plaintiffs (i) the purchase prices for the respective real estate paid (or being paid) to the sellers of the real estate in connection with the Eight Transactions; (ii) the amount of cash paid (or to be paid) on contract to the seller(s); (iii) the amount of cash paid to the seller(s) at closing; (iv) the identity of and the principal amount of purchase money mortgages executed by the defendants on behalf of the plaintiffs and allegedly delivered to the seller(s) at closing; (v) the amount of expenses in connection with the acquisition of the real estate including legal fees and title insurance premiums being paid; and (vi) the amount of capital being contributed by the Defendant Promoters under the Agreements in the Eight Transactions and the respective interests of the Defendant Promoters under the Agreements in the Eight Transactions.

B. The Defendant Promoters concealed from plaintiffs that they had executed to themselves through the defendant corporations, mortgages on the real property of the Eight Transactions which mortgages were without consideration, were not bona fide and were utilized solely to benefit the Defendant Promoters personally and to enable them to obtain secret and fraudulent profits and fees (herein

referred to as "phony mortgages"). These phony mortgages aggregate in the principal amount, at least $889,110 and were given to the defendant corporations as follows:

| Defendant Corporation | Transaction | Principal Amount of Phony Mortgage(s) |
|---|---|---|
| Group Administrators Corp. | 222 Transaction | $187,100. |
| Mendon Properties, Inc. | 102, 109 and 196 Transactions | 131,900. |
| Parkham Development Corp. | 150 Transaction | 396,660. |
| Rillstone Properties Inc. | 158,231 and 250 Transactions | 174,450. |
| | | $890,110. |

C. The Defendant Promoters billed the plaintiffs and other investors and collected from them interest on the phony mortgages aggregating in excess of $150,000, which interest the Defendant Promoters represented was due to bona fide mortgagees (including sellers who held bona fide purchase money mortgages) when in fact said interest was being received by the Defendant Promoters through the defendant corporations and converted for their own personal benefit.

D. The Defendant Promoters received from the plaintiffs excess cash capital contributions not required for the acquisitions of the real properties in connection with the Eight Transactions and used that excess cash for undisclosed purposes and converted same for the personal benefit of the Defendant Promoters.

E. The Defendant Promoters represented to the plaintiffs at the inception of the Eight Transactions that they themselves were making capital contributions under the Agreements in the aggregate, exceeding $300,000, but the Defendant Promoters failed to make these contributions, failed to disclose this fact to the plaintiffs, and continued to represent to the plaintiffs that they had made these capital contributions and owned pro rata interests with the plaintiffs under the Agreements for the Eight Transactions.

F. The Defendant Promoters represented to the plaintiffs that they were making capital contributions under the Agreements in connection with the Eight Transactions when they in fact were not, but said Defendant Promoters claiming credit for interests under the Agreements did in fact sell, transfer, and assign their alleged interests to public investors and in fact received monies from said persons which the Defendant Promoters converted to their own personal use, all of which the Defendant Promoters concealed from the plaintiffs.

G. In connection with the 109 Transaction, the Defendant Promoters in a period of 16 months, artificially inflated, manipulated and over-stated the alleged market value and sales price of the real property of the 109 Transaction from $2,150 per acre to $9,600 per acre by fraudulently creating and interpositioning alleged bona fide transactions which were not bona fide;

defendants accomplished this through the defendants Tamerlane Properties Inc. and Byerly Properties, Inc., among others, and through friends, business associates and relatives of the Defendant Promoters (including Samuel L. Grimes, Alfred Meyers, Hy Pogash, Burton Bronsther and Arthur Vogel, among others), who acted as nominees for the Defendant Promoters or who acted as alleged bona fide purchasers of the real estate, all with the view of personally benefiting therefrom by, among other things, being given mortgages by the Defendant Promoters without consideration on the real property of the 109 Transaction, as follows: a mortgage dated November 25, 1970 in the principal amount of $107,085 to Tamerlane Properties, Inc.; a mortgage dated November 25, 1970 in the principal amount of $155,340 to Kenneth E. Boklan which he assigned without consideration to Byerly Properties Inc., which in turn assigned said mortgage to a corporation known as Sackman-Gilliland Corporation; a mortgage dated November 24, 1970 in the principal amount of $53,920 to Alfred Meyers; a mortgage dated November 25, 1970 in the principal amount of $104,600 to Alfred Meyers; a mortgage dated November 25, 1970 in the principal amount of $53,080 to Samuel L. Grimes; a mortgage dated July 6, 1971 in the principal amount of $23,000 to Mendon Properties, Inc.; and a mortgage dated July 6, 1971 in the principal amount of $28,000 to Hy Pogash and Burton Bronster (all of said mortgages hereinafter being referred to as the "phony 109 mortgages").

H. The Defendant Promoters billed certain plaintiffs and collected from them interest for the phony 109 mortgages in excess of $100,000.

I The Defendant Promoters failed to disclose in connection with the 109 Transaction that Vogel and Boklan since 1969 had undisclosed interests in the real estate of the 109 Transaction, and from 1969 through 1974 continued to personally benefit from these undisclosed interests in the real property, which undisclosed interests took the form of equity interests in the ownership of the real estate, equity interests in one or more of the phony 109 mortgages, and real estate brokerage commissions, finders' fees, and other compensation.

J. Eugene Rodin and Bruce Rodin, on behalf of themselves and the defendant Vogel, falsely represented to one or more of the plaintiffs that they would be also at risk with the plaintiffs in the investments.

K. Eugene Rodin and Bruce Rodin on behalf of themselves and on behalf of the defendant Vogel, falsely represented to one or more of the plaintiffs that it was their usual practice to dispose of real property in a period of two to three years and they would follow this practice with respect to the Eight Transactions.

L. Boklan in violation of his duties as an attorney and in violation of his duties to the plaintiff investors whom he also represented, in a conflict of interest situation as

a result of his undisclosed representation of the defendant corporations, of Eugene Rodin, Bruce Rodin and Vogel, wrongfully charged the plaintiffs and other investors and received from them attorney's fees in excess of $60,000; further, he computed those attorney's fees on the basis of 1% of the false and fictitious purchase prices for the real property, as more particularly set forth in paragraph 30 of this Complaint. Boklan further received for his own personal benefit from title insurance companies, commissions in the form of refunds of title insurance premiums which he personally pocketed and with respect to which he never disclosed or accounted to the plaintiffs.

M. The Defendant Promoters failed to disclose to the plaintiffs material facts as to the business, professional and corporate relationships, past and present, of the defendants among themselves.

N. The Defendant Promoters failed to disclose to the plaintiffs that they owned in the same area other real estate more favorably situate than that of the real estate of the Eight Transactions.

O. Prior to the filing of this action the Defendant Promoters intended to eventually sell the real estate of the Eight Transactions to themselves without disclosure, and to engage in other acts of self dealing.

30. With the exception of the 109 Transaction, the true purchase prices and consideration paid to the sellers of the respective real properties are reflected (i) in deeds recorded in the State of New Jersey and (ii) in closing statements prepared and submitted to the sellers by their respective attorneys. These documents establish that the Defendant Promoters overstated to the plaintiffs the purchase prices of the real property of the Eight Transactions in the aggregate by at least $1,233,305.40 as follows:

| | (i) Purchase Prices Represented by Promoter Defendants in Memoranda of Contract and/or Closing Statements submitted to Plaintiffs. | (ii) Purchase Prices & Consideration Paid as reflected by Deeds of Record and Sellers Closing Statements in connection with Sales to Def. Prom. on behalf of Plaintiffs | (iii) Overstatement by Def. Promoters |
|---|---|---|---|
| 102 Transaction | $611,760. | $510,000. | $101,760. |
| 109 Transaction | 1,045,000. | 951,455. | 93,545. |
| 150 Transaction | 1,128,680. | 752,455. | 376,225. |
| 158 Transaction | 530,338.50 | 435,382.60 | 94,955.90 |
| 196 Transaction | 392,000. | 315,000. | 77,000. |
| 222 Transaction | 1,334,316. | 1,033,705. | 300,611. |
| 231 Transaction | 504,208.50 | 405,000. | 99,208.50 |
| 250 Transaction | 575,000. | 485,000. | 90,000. |
| | $6,121,303.00 | $4,887,997.60 | $1,233,305.40 |

31. In furtherance of their wrongful conduct as hereinbefore alleged, the Defendant Promoters conspired and did in fact take and pay to themselves substantial undisclosed profits, fees and commissions, the exact amounts of which are presently unknown to the plaintiffs.

32. In furtherance of their wrongful conduct hereinbefore alleged, and deliberately to avoid disclosure of the true facts and as part of the continuing fraud perpetrated upon plaintiffs, the Defendant Promoters commencing in 1971 and in a continuous series of related and integrated public offerings, sold certain securities consisting of investment contracts in the Eight Transactions to the plaintiffs and offered to sell these securities to them without their being in effect as to these securities (i) a Registration Statement filed with the Securities and Exchange Commission, all in violation of Section 5 of the Securities Act; or (ii) a Registration Statement filed with the Office of the Attorney General of the State of New York pursuant to Sections 352-e, or 359-ff of the General Business Law; these securities were sold and offered for sale by the Defendant Promoters within the Eastern District of New York through means and instruments of transportation and communication in interstate commerce and through the mails.

33. Plaintiffs purchased the aforesaid securities from the Defendant Promoters and paid to them an aggregate cash consideration of $1,012,000.

34. All monies paid by the plaintiffs for the Eight Transactions were received by Boklan, and upon the instructions of Eugene Rodin and Vogel, deposited in and disbursed from one bank account, namely Account # 41-481-701 with the Bankers Trust Company, in the name "Kenneth E. Boklan Special", an account also utilized by the defendants for purposes other than the Eight Transactions.

35. A. Eugene Rodin and Vogel have assembled the real property of the 109 Transaction, of the 150 Transaction and o. the 222 Transaction into one assemblage called the "Winslow Crossing Assemblage." These parcels have been assembled with other parcels acquired by the Defendant Promoters and not included in the Eight Transactions.

B. In November 1972 the Defendant Promoters requested of certain of the plaintiffs monies for the purpose of defraying the expense of preparing a common typographical map for a common rezoning application for the real property in Hope Township, comprising the 102 Transaction, the 158 Transaction and other real estate in which the Defendant Promoters have an interest but in which other real property the plaintiffs have no interest.

36. The real property of the 150 Transaction and of the 222 Transaction are practically contiguous; the real property of the 102 Transaction and of the 158 Transaction are practically contiguous.

37. The Defendant Promoters in 1973 and 1974 billed and received from the plaintiffs substantial monies for the development of common sewage facilities for the real estate of five of the Eight Transactions without disclosing material facts pertaining thereto.

38. The defendants have never made any appropriate filings with the Securities and Exchange Commission or with the Attorney General of the State of New York or with any other governmental agency, with respect to investments in or the offering of investments in the Eight Transactions.

39. Between 1970 and June 1974, the Defendant Promoters disseminated and delivered to the plaintiffs materially false "memoranda of contracts", "joint venture agreements" and "statements as to closing of title" in connection with the plaintiffs' purchase of their respective investments in the Eight Transactions which documents materially misrepresented the facts as more particularly alleged at paragraphs "29" and "30" of this complaint.

40. That the Defendant Promoters have engaged in other acts of fraud in the premises.

41. That the defendants, Samuel L. Grimes, Birnbaum, Arthur Vogel and Bervo Associates Inc. have aided and abetted the wrongful conduct and fraud herein alleged in connection with the 109 Transaction and actively participated therein by, among other acts, lending their names and advice to one or more transactions in the chain of transactions which led to the manipulation and the phony 109 mortgages. Birnbaum also aided and abetted the alleged wrongful conduct and fraud in connection with the 150 Transaction. Each of the foregoing defendants knew or should have known that the interests in the real properties which are the subject of one or more of the Eight Transactions were being sold by the Defendant Promoters or were intended to be sold by them to public investors.

42. Sylvia Rodin has been an undisclosed principal and/or partner in the real estate ventures of her husband Eugene Rodin and of her son Bruce Rodin; capital for these ventures and for one or more of the defendant corporations have been furnished by Sylvia Rodin and/or Eugene Rodin and/or from their joint bank accounts; Sylvia Rodin is or has been a shareholder of one or more of the defendant corporations and she is or has been an officer of one or more of said corporations. Sylvia Rodin after the filing of this action has received distribution of certain of the assets of Rillstone Properties Inc. At all times Sylvia Rodin has been aware of the frauds, hereinbefore alleged, which were being perpetrated

upon the plaintiffs and she either participated in the wrongs herein alleged, wrongfully acquiesced therein and/or aided and abetted them, and further, has personally benefited thereby.

43. The investments by the plaintiffs occurred as a result of the fraud perpetrated upon them as hereinbefore alleged.

44. Eugene Rodin, Vogel and Boklan have converted to their own use and benefit monies and real estate interests belonging to the plaintiffs.

45. Eugene Rodin, Vogel and Boklan have refused to account to the plaintiffs although requests for accountings have heretofore been made.

46. The Defendant Promoters by reason of their positions of control and the trust placed with them by the plaintiffs, are under a duty to refrain from preferring their own interests and to refrain from self-dealing.

47. The individual defendants owed and owe a fiduciary duty to the plaintiffs to make complete and truthful disclosure of all matters relating to the plaintiffs' investments in the Eight Transactions, to conduct themselves in the best interests of the plaintiffs and other investors and not to engage in any act or practice constituting a breach of fiduciary duty.

48. The conduct of the Defendant Promoters aforesaid constitutes violations of their fiduciary responsibilities.

49. Each of the defendant corporations actively participated in the wrongs hereinbefore alleged or aided and abetted therein.

50. By the conduct aforementioned all of the defendants have acted fraudulently, wantonly, deliberately and with reckless disregard for the consequences of their acts and have committed a gross fraud, involving high moral culpability that was aimed at the public generally.

51. Certain plaintiffs did not have any knowledge of the untrue statements and material omissions and did not have knowledge of the facts of the fraud hereinbefore alleged until shortly before the filing of this action and the remaining plaintiffs only learned thereof after the filing of the action; nor could the plaintiffs have discovered them sooner by the exercise of reasonable diligence. The facts as herein alleged were deliberately concealed by the defendants.

COUNT 1

(Under Section 12(1) of the Securities Act on behalf of all plaintiffs against the Defendant Promoters, Sylvia Rodin, and each of the Defendant Corporations

52. Plaintiffs repeat and reallege each of the allegations contained in paragraphs "1 through 39" and in paragraphs "42", "49" and "51".

53. Commencing in 1971 and continuing through 1972 and 1973, the Defendant Promoters sold certain securities to plaintiffs

and offered to sell such securities to others without there being in effect as to any of the said securities a Registration Statement filed with the Securities and Exchange Commission in violation of Section 5 of the Securities Act.

54. The securities involved were 8 joint venture investments contracts, heretofore described, in paragraphs 7 and 24 of this complaint, all of which related to land in New Jersey, and were sold and offered for sale by the promoters within the Eastern District of New York through means and instruments of transportation and communication in interstate commerce and through the mails.

55. Plaintiffs purchased the securities for an aggregate cash consideration in excess of $1,000,000.

56. Plaintiffs hereby tender the securities to the said defendants and demand return of the consideration paid for the securities, and all money paid for real estate taxes, closing costs, attorneys fees and other charges, expenses and disbursements together with interest thereon.

COUNT 2

Under Section 12(2) of the Securities Act on behalf of all plaintiffs against the Defendant Promoters, Sylvia Rodin, and each of the Defendant Corporations

57. Plaintiffs repeat and reallege each of the allegations contained in paragraphs "1 through 39", and paragraphs "42", "49" and "51" hereof.

58. In a continuous offering between 1970 and 1974 the Defendant Promoters sold to plaintiffs securities consisting of investment contracts relating to land in New Jersey heretofore more particularly described at paragraphs 7 and 24 by means of (i) prospectuses consisting of "Memoranda of Contracts", "Joint Venture Agreements" and "Statements of Title Closing" and (ii) oral communications,which included untrue statements of material fact and omitted to state the material facts, as hereinbefore alleged.

59. Plaintiffs hereby tender the securities purchased to the said defendants and demand return of the consideration paid for the securities, and all money paid for real estate, taxes, closing costs, attorneys fees and other charges,expenses and disbursements together with interest thereon.

COUNT 3

On behalf of all plaintiffs (except as to the purchase of securities in the 109 Transaction by plaintiffs Ingram, Jarkow, Gudwin, Kanton, Milton and Davis) under Section 17 of the Securities Act and under Section 10(b) of the Exchange Act and SEC Rule 10b-5 against all defendants (except Samuel L. Grimes, Arthur Vogel and Bervo Associates Inc.)

60. Plaintiffs repeat and reallege each of the allegations of paragraphs "1 through 29 F", "29 J through 51" hereof.

61. The material false statements and material concealments hereinbefore alleged were made deliberately and all of the conduct of the defendants as aforesaid was deliberate and in reckless disregard for the truth and the consequences.

62. The plaintiffs relied upon the honesty of the Defendant Promoters, relied upon the truth of the statements made to them, relied upon the truth of the statements contained in the "Memoranda of Contracts", "Joint Venture Agreements" and "Statements of Title Closing" and would not have purchased their respective investments had they known these documents were materially false.

63. By reason of the fraudulent activities of the defendants in connection with the plaintiffs' purchase of their securities, the plaintiffs have suffered damages based upon the differences between the respective purchase prices for their securities and the respective true value of these securities based upon their actual selling prices and have suffered other damages.

64. Had the plaintiffs known of the frauds perpetrated and being perpetrated upon them, they would not have continued to make payments to the Defendant Promoters in connection with their

investments and plaintiffs have been additionally damaged accordingly in amounts equal to these payments.

COUNT 4

On behalf of all plaintiffs against all defendants under the Common Law for Fraud

65. Plaintiffs repeat and reallege each of the allegations of paragraphs "1 through 51" hereof and "61 through 64" hereof.

66. The concealments of material facts by the Defendant Promoters was deliberate and the Defendant Promoters made the material false statements knowing and intending that the plaintiffs would rely thereon and these defendants continued to make false statements knowing that the plaintiffs would continue to rely thereon.

67. By virtue of the fraud plaintiffs hereby elect to rescind their investments with the defendants and their respective joint venture agreements and hereby tender to the defendants their respective investments and demand return of all consideration paid and all monies paid for real estate taxes, closing costs, attorney fees and other charges, expenses and disbursements collected from them by the defendants together with interest thereon and demand further appropriate damages.

COUNT 5

On behalf of Plaintiffs Ingram, Jarkow, Gudwin, Kanton, Davis and Milton in connection with their respective purchases of securities in the 109 Transaction against Eugene Rodin, Seymour Vogel, Kenneth E. Boklan, Samuel L. Grimes, Arthur Vogel, William Birnbaum, Mendon Properties, Inc., Tamerlane Properties, Inc., Bervo Associates, Inc., under Section 17 of the Securities Act and under Section 10(b) of the Exchange Act and SEC Rule 10b-5.

68. These plaintiffs repeat and reallege each of the allegations of paragraphs "1" through "51", "61", "62"and "67" hereof.

69. Between the summer of 1969 and December 1970, Boklan and Samuel L. Grimes were engaged in the practice of law together, sharing expenses and fees resulting from their practice; they shared the same physical location and the same address, including their Post Office address; in 1969 and 1970 their clients included Vogel, Eugene Rodin, and one Alfred Meyers.

70. Commencing in the summer or fall of 1969, Vogel developed a fraudulent scheme to make substantial undisclosed personal profits for himself and for certain of his friends and business associates from the assemblage of three parcels of real property in Winslow Township, Camden County, New Jersey; these three parcels were then owned of record (i) by Florence Getzov, consisting of approximately 44 acres (the "Getzov parcel");

(ii) by one Frank Penetar and his wife, consisting of approximately 32 acres (the "Penetar parcel"); and (iii) by Charles Hodges and his wife, consisting of approximately 33 acres (the "Hodges parcel"), the three parcels aggregating 109 acres.

71. For the purposes of his fraudulent scheme, Vogel enlisted the aid of Boklan, Samuel Grimes, Alfred Meyers and Eugene Rodin, and subsequently the aid of defendant William Birnbaum and his clients, one Burton Bronsther and Hy Pogash.

72. As part of his scheme, Vogel, with the aid of certain of the defendants and the aforesaid individuals, caused the following to occur:

(i) In September 1969 Vogel's corporation, defendant Tamerlane Properties Inc.("Tamerlane")(1) entered into a contract with Mr. and Mrs. Penetar to purchase the Penetar parcel for the price of $100,000 subject to a $75,000 purchase money mortgage, and (2) also entered into a contract with Florence Getzov to purchase the Getzov parcel for $99,034 subject to a $75,000 purchase money mortgage. Each of the contracts were executed on behalf of Tamerlane by Boklan, as secretary of Tamerlane.

(ii) In February 1970, Tamerlane, although it had not yet taken title to the property, entered into a contract with Samuel L. Grimes ("Grimes") to sell the Getzov parcel for $224,800 (payable $20,000 cash on signing contract; $24,900 cash on closing;

$75,000 by taking title to the Getzov purchase money mortgage; and by giving Tamerlane a $104,900 second purchase money mortgage). The contract was executed on behalf of Tamerlane by Boklan as secretary of Tamerlane. The sales price to Tamerlane represented a 127% appreciation over that price agreed to be paid by Tamerlane only some four months earlier.

(iii) In February 1970, Tamerlane, although it had not yet taken title to the property, entered into a contract with Remford Properties Inc. (a corporation which was either a client of Grimes or controlled by him) to sell the Penetar parcel for $145,035 (payable $16,115 cash on signing contract; $75,000 by taking title to the Penetar purchase money mortgage, and by giving Tamerlane a $53,920 second purchase money mortgage). The contract was executed on behalf of Tamerlane by Boklan as secretary of Tamerlane. The sales price to Tamerlane represented a 45% appreciation over that price agreed to be paid by Tamerlane only some four months earlier.

(iv) Vogel personally guaranteed to Grimes and to Remford Properties Inc., in connection with the two aforesaid contracts, the return of the down payments paid on contract if title did not close, and he guaranteed the resale of the properties.

(v) In February 1970, upon the instructions of Vogel and at his behest, Grimes entered into a contract with Mr.

and Mrs. Hodges to purchase the Hodges parcel for $35,000 ($10,350 cash and the balance by a purchase money mortgage).

(vi) In June 1970 Tamerlane assigned its rights under the September 1969 contract with Getzov to Boklan. On June 22, 1970, Boklan took title in his own name to the Getzov parcel; a closing statement reflects the consideration for the transfer was $99,034, payable $24,034 cash and $75,000 by a purchase money mortgage to Mrs. Getzov.

(vii) Under date of July 2, 1970, Boklan deeded the Getzov parcel and conveyed title thereto to Alfred Meyers, a client of Vogel and of Grimes & Boklan, Esqs. The deed recites $10.00 consideration. Boklan forwarded that deed on August 10, 1970 for recording.

(viii) In June 1970 Grimes closed title to the Hodges parcel for $35,000 subject to a $24,850 purchase money mortgage. On July 8, 1970, Grimes entered into a contract with Tamerlane (executed on its behalf by Boklan as secretary of Tamerlane) to sell the Hodges parcel to Tamerlane for $96,930 (payable $16,000 cash; $24,850 by taking title to the Hodges purchase money mortgage, and by a $57,080 second purchase money mortgage to Grimes).

(ix) On September 17, 1970, defendant Bervo Associates Inc. was incorporated.

(x) On or about September 17, 1970, Vogel and Bervo Associates Inc. (in formation) entered into an agreement

with Hy Pogash and Burton Bronsther, conducting business as Pogash-Bronsther Associates,(and also known as Pogash-Bronsther Agents) to acquire the rights of Pogash-Bronsther Associates under a contract by them with one Gerber for the purchase by them of a 38-acre parcel of real estate at Bellport, New York; in consideration Vogel and Bervo Associates Inc. ("Bervo") delivered a check drawn on the account of Bervo in the amount of $44,000, which check was not deposited or negotiated but was held in escrow.

(xi) Under date of September 29, 1970, Arthur Vogel (brother of Vogel) executed a contract to sell to Hy Pogash and Burton Bronsther, doing business as Pogash-Bronsther Associates, the Getzov parcel, the Penetar parcel, and the Hodges parcel for the sum of $825,000 payable $100,000 in cash on the execution of the contract, $65,000 in cash on closing of title, and $660,000 "which will represent the total of all mortgages now liens upon the real property, or which may be placed upon the property at or prior to the time of closing of title as provided herein, including a purchase money mortgage to be given" to Arthur Vogel. Pogash-Bronsther Associates delivered to Arthur Vogel two checks, one in the amount of $75,000 dated September 29, 1970, and a second check in the amount of $25,000 dated October 8, 1970. Vogel

(brother of Arthur Vogel) guaranteed the return of the down payment if it became necessary, and guaranteed the repurchase of the property, if necessary.

(xii) Under date of September 29, 1970, the $44,000 check of Bervo (item "x", supra) was returned to Bervo on behalf of Pogash-Bronsther Associates, and in its place and stead they received from Arthur Vogel a check in the amount of $44,000. The check of Bervo was cancelled and the check of Arthur Vogel was not deposited or negotiated but held in escrow until such time as the $75,000 check given that day by Pogash-Bronsther Associates to Arthur Vogel cleared. (item "xi", supra)

(xiii) Vogel by separate agreement indemnified Pogash and Bronsther for all liability with respect to the agreements between them and Vogel's brother, Arthur Vogel. (item "xi", supra)

(xiv) By agreement under date of October 5, 1970, Grimes and Remford Properties, Inc. agreed to sell back to Vogel the respective two February 1970 contracts (items "ii" and "iii" supra) which Vogel's corporation, Tamerlane, had entered into with Grimes and Remford Properties Inc. The agreement recites that Vogel will pay to these two the sum of $36,115, and that Remford Properties Inc. and Grimes have agreed to execute and deliver to Vogel assignments of those contracts when Grimes as

seller has received "payment in full of the consideration provided t[illegible] paid" Grimes "pursuant to that contract of sale between Grimes as seller and Tamerlane Properties Inc. as buyer dated July 8, 1970" for the Hodges parcel (items "v" and "viii" supra). The amount of $36,115 was the cash that Grimes and Remford Properties Inc. allegedly paid to Tamerlane in February 1970 on signing the two contracts (items "ii" and "iii" supra). Grimes and Vogel further agreed that the purchase money mortgage of $57,080, which was to be given to Grimes when Tamerlane purchased the Hodges parcel under the July 8, 1970 contract, was to be reduced to $53,080 -- and they further agreed to spread the mortgage to include not only the Hodges parcel but also the Getzov and Penetar parcels.

(xv) Grimes executed assignments of the two February 1970 contracts between Tamerlane as seller and Samuel L. Grimes as purchaser, and Tamerlane as seller and Remford Properties Inc. as purchaser. The name of Seymour Vogel as assignee was inserted in the assignments, and under date of October 6, 1970 Vogel assigned those contracts to Arthur Vogel. Further, under date of October 6, 1970, Boklan caused Tamerlane to assign to Vogel the rights under the contract dated July 8, 1970 between Samuel L. Grimes as seller and Tamerlane Properties Inc. as purchaser, which was further assigned by Vogel to his brother, Arthur Vogel.

(xvi) On November 25, 1970, the contract between Arthur Vogel and Pogash-Bronsther Associates closed and Arthur Vogel executed and delivered deeds to the Getzov, Penetar and Hodges parcels to Pogash and Bronsther. The alleged purchase price was $817,875 calculated on the basis of a sale of 109.05 acres at $7,500 per acre. At the closing or subsequent thereto the following "phony 109 mortgages" aggregating in the principal sum $474,025, were executed and delivered by Pogash and Bronsther:

a mortgage to Alfred Meyers in the principal amount of $104,600;
" " " Alfred Meyers " " " " " $53,920;
" " " Samuel L. Grimes " " " " $53,080;
" " " Tamerlane Properties Inc." " " $107,085; and
" " " Kenneth E. Boklan " " " $155,340.
$474,025.

In addition, Pogash & Bronsther took title subject to a mortgage of $75,000 held by the Penetars; a mortgage of $75,000 held by Florence Getzov, and a mortgage of $24,850 held by Mr. and Mrs. Hodges. Accordingly the total principal amount of the mortgages placed on the three parcels was $648,875, or some 300% of the aggregate sales prices of the properties some 12 months before.

(xvii) On November 25, 1970 at the aforesaid closing, Pogash-Bronsther Agents delivered to Boklan as attorney, two checks in the amounts of $26,000 and $39,000. Boklan issued a check

to Pogash-Bronsther Agents for $4,020 and further endorsed back to Pogash-Bronsther Agents the check for $39,000.

(xviii) In February 1971 Boklan assigned the mortgage of $155,340 to the defendant, Byerly Properties Inc., which in turn on the same day assigned the mortgage to Sackman-Gilliland Corporation, receiving substantial proceeds from said assignment which were then disbursed to or for the benefit of Vogel, Boklan, Rodin and others.

(xix) On July 6, 1971, Boklan, Birnbaum and Rodin caused title to the Penetar parcel, the Getzov parcel and the Hodges parcel to be transferred back from Pogash and Bronsther to Boklan, as nominee for the plaintiffs and other investors in the 109 Transaction for a purported consideration of $951,445 which included the issuance of two additional purported mortgages by Boklan aggregating $131,000, making a then total of $779,875 in mortgages then outstanding.

(xx) On July 6, 1971, two additional purported mortgages were issued by Boklan, one of which was to Hyman Pogash and Burton Bronsther in the sum of $108,000, and the other was issued to defendant Mendon Properties Inc. in the sum of $23,000, for which mortgage no consideration was paid. Shortly after July 6, 1971, the $108,000 mortgage was reduced in two steps:

first, by $80,000 and second, by an additional $20,000, leaving a balance of $8,000, which mortgage was then assigned to third parties.

73. The Defendant Promoters used various corporate and individual conduits and nominees to create the appearance of transfers of title and the appearance of bona fides to the foregoing transactions in connection with the 109 Transaction in order to take unto themselves substantial undisclosed profits.

74. That the true sales price and market value of the three parcels of the 109 Transaction on July 6, 1971 was $234,034, the aggregate consideration paid to Mr. and Mrs. Penetar, Mr. and Mrs. Hodges, and Florence Getzov.

75. That in November 1970 when the Defendant Promoters and Birnbaum caused title to the Penetar, Getzov and Hodges parcels to be transferred to Pogash and Bronsther, the purported consideration was $638,655, and not as set forth in the written contract.

76. In the winter of 1970/71 Rodin and Vogel commenced to seek investors who would purchase the real estate of the 109 Transaction, and in March 1971 Rodin agreed to enter into a contract to purchase the property from Pogash and Bronsther. The agreed purchase price was $951,455, or approximately $9,000 per acre. The price was to be paid by cash of $30,000; by taking

title to the aforesaid mortgages aggregating $648,875 and by taking title to additional mortgages totalling $244,570. This price was not negotiated at arm's length but fixed arbitrarily by Vogel, Rodin, the defendant William Birnbaum and others, so as to give a semblance of bona fides to all the preceding transactions, as more particularly alleged at paragraph "72", and to ensure personal profits to all the participants in the fraud.

77. In the Spring of 1971 Rodin and Vogel raised from public investors a total of $312,500 including $180,000 from these plaintiffs for the 109 Transaction.

78. The material facts in connection with the 109 Transaction as alleged herein were not disclosed at the time that the plaintiffs made their investments and were only learned as a result of plaintiffs' counsels' investigation in connection with this action. Had plaintiffs known of these facts they would not have invested with the Defendant Promoters and would not have paid them any money at the inception of the investment or thereafter.

79. The plaintiffs relied upon the honesty of the Defendant Promoters, relied upon the truth of the statements made to them, relied upon the truth of the statements contained in the Joint Venture Agreement and statement of title closing in connection with the 109 Transaction and would not have purchased their respective investments had they known these documents were materially false.

80. With the exception of the mortgages given to Mr. and Mrs. Hodges, Mr. and Mrs. Penetar and Florence Getzov upon the sales of their respective properties, all of the mortgages subsequent thereto in connection with the 109 Transaction were not bona fide, were not received in arm's length transactions, are tainted with the fraud hereinbefore alleged and are void.

COUNT 6

Action for Conversion
on behalf of all Plaintiffs
against all Defendants
(except Arthur Vogel, Bervo
Associates Inc., William N.
Birnbaum and Samuel L. Grimes)

81. Plaintiffs repeat and reallege each of the allegations of paragraphs "1" through "40" and "42" through "51" hereof.

82. The defendants have wrongfully converted to their own use monies and interests in real properties and in other properties which belong to plaintiffs and plaintiffs have been damaged accordingly.

COUNT 7

Action for Breach of Fiduciary
Obligations on behalf of all
Plaintiffs against all Defendants
(except Arthur Vogel, Bervo
Associates Inc., William N.
Birnbaum and Samuel L. Grimes)

83. Plaintiffs repeat and reallege each of the allegations of paragraphs "1" through "40" and "42" through "51" hereof.

84. Each of the defendants owed the plaintiffs the duty of the finest undivided loyalty, to morals above the market place, not honesty alone, but the "punctilio of an honor the most sensitive." Each of the defendants have violated that duty and plaintiffs have been damaged accordingly.

COUNT 8

Action for an Accounting
on behalf of all Plaintiffs
against all Defendants
(except Arthur Vogel, Bervo
Associates Inc., William M.
Birnbaum and Samuel L. Grimes)

85. Plaintiffs repeat and reallege each of the allegations of paragraphs "1" through "40" and "42" through "51" hereof.

86. The defendants have acted as agents and fiduciaries for plaintiffs and in the fiduciary setting of the Eight Transactions have received substantial monies which rightfully belong to the plaintiffs but which the defendants have converted to their own use, which they have commingled with their own funds and with those of others, and defendants have refused to account to the plaintiffs or to provide them with appropriate records, or

to provide financial information and other information concerning the Eight Transactions.

87. Plaintiffs have no adequate remedy at law.

COUNT 9

Action under the New York General Business Law, Sections 352e and 359ff on behalf of all Plaintiffs against the Defendant Promoters, Sylvia Rodin and each of the Defendant Corporations.

88. Plaintiffs repeat and reallege each of the allegations of paragraphs "1" through "40" and "42" through "51" hereof.

89. In a continuous offering between 1970 and 1974, the Defendant Promoters sold to plaintiffs securities consisting primarily of participation interests or investments in real estate ventures without there being in effect as to any of the said securities an "Offering Statement" filed with the Department of Law of the Attorney General of the State of New York, pursuant to Sections 352e and 359ff of the General Business Law of the State of New York.

90. Plaintiffs purchased the securities for an aggregate cash consideration in excess of $1,000,000.

91. Plaintiffs hereby tender the securities to the said defendants and demand return of the consideration paid for the securities and all monies paid for real estate taxes, closing costs, attorneys' fees, and other charges, expenses and disbursements, together with interest thereon.

COUNT 10.

On behalf of Plaintiff Karl M. Neimand against the Defendants Eugene Rodin, Kenneth E. Boklan, and Rillstone Properties Inc.

92. Plaintiff Karl M. Neimand repeats and realleges each of the allegations of paragraphs "1" through "11","14","17" and "19" through "22" hereof.

93. In 1972, defendant Eugene Rodin induced plaintiff to forward the sum of $45,000 to defendant Boklan, allegedly for the purpose of purchasing an investment in a real estate venture on Long Island, and on October 30, 1972, Boklan acknowledged receipt of the monies. Said monies may have been deposited with Rillstone Properties Inc.

94. Plaintiff Neimand has continuously inquired as to the nature of the investment and for an accounting, but Eugene Rodin and Boklan have refused to furnish plaintiff with any explanation or with any documents with respect to the purported investment or to furnish plaintiff an accounting.

95. Eugene Rodin, Boklan and/or Rillstone Properties, Inc. have wrongfully withheld the return of the said $45,000 and have converted these monies to their own use or to uses unauthorized by plaintiff Neimand. Said $45,000 has not been returned although duly demanded.

WHEREFORE, the plaintiffs demand judgment as follows:

A. Under Counts "1", "2" and "9" against the defendants Eugene Rodin, Bruce Rodin, Sylvia Rodin, Seymour Vogel, Kenneth E. Vogel, Mendon Properties, Inc., Parkham Development Corp., Rillstone Properties, Inc., Godsberg Realty Corp., Byerly Properties, Inc., Group Administrators Corp., Tamerlane Properties, Inc., Hartwick Properties, Inc., Cole-Hunt Development Corporation, Bervo Associates, Inc., and Sy Vogel Associates, the return of all monies paid prior to the entry of judgment in connection with the Eight Transactions, including capital contributions and monies paid for real estate taxes, closing costs, attorneys' fees and other charges, expenses and disbursements together with interest thereon, and under Counts "4", "6" and "7" against all the defendants as therein indicated (i) for the return of all monies paid prior to the entry of judgment in connection with the Eight Transactions, including capital contributions and monies paid for real estate taxes, closing costs, attorneys' fees and other charges, expenses and disbursements together with interest

thereon;(ii) for compensatory damages in an amount equal thereto; and (iii) for such punitive damages as may be awarded.

B. Under Count "8", as against all defendants as therein indicated (i) for an accounting for all monies received from the plaintiffs and disbursed therefrom in connection with the Eight Transactions; and (ii) for an accounting for all fees, refund of title insurance premiums, brokerage commissions, finders' fees, compensation of any nature, property interests of any nature, emoluments directly or indirectly received or made by the defendants in connection with the Eight Transactions and (iii) the recovery and restitution of such of said sums as may be found to be due to the plaintiffs.

C. Under Counts "3" and "5", as against the defendants as therein indicated, all actual damages sustained by the plaintiffs prior to the entry of judgment, including damages equal to all monies paid prior to entry of judgment for whatever reason by plaintiffs in connection with the Transactions.

D. On behalf of Karl M. Neimand under Count "10", damages in the amount of $45,000.

E. Under Counts "1" through "10", granting and awarding the plaintiffs (i) such other and further relief as may be just. equitable and proper; (ii) the costs and disbursements of this action including reasonable fees for their attorneys and experts, and (iii) appropriate interest.

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PURCHASE AGREEMENT

Agreement made as of this 17th day of July, 1975 by and among (i) Karl M. Neimand, Sydney Jarkow, Arthur A. Ingram, Sidney Mishcon, Morris Gudwin, Edward A. Pallack, George Cooper, Leonard Milton, Dorothy Levess, Bernard S. Kanton, Mortimer Ehrman, William Ehrman, Samuel Ehrman, Richard Ehrman, Jack Orloff, Alexander Davis, Melvin Hirschberg, David Herschberg, George Schwartz, Matthew Stein, Eugene Cohn, Mae Cohn, Margaret Cohn, Abraham Goldfarb, Van Baalen Heilbrun & Co., Inc. Employees Profit Sharing Plan and Trust, Robert Wolfe, Benjamin Jagendorf, Ralph Maxon, Ethel Reibstein, and Lester Mishcon (all of the foregoing are collectively referred to hereafter as the "Initial Sellers"); (ii) those persons who elect to become parties hereto in accordance with section 3; (iii) Sy Vogel Associates, Seymour Vogel, Kenneth E. Boklan, Eugene Rodin, and Bruce Rodin; (iv) Mendon Properties, Inc., Parkham Development Corp., Rillstone Properties, Inc., Godsberg Realty Corp., Byerly Properties, Inc., Group Administrators Corp, Tamerlane Properties, Inc., Hartwick Properties, Inc., Cole-Hunt Development Corporation, and Bervo Associates, Inc. (all of the foregoing ten corporations are hereafter collectively referred to as the "Corporations"); (v) Charles Hecht & Company; and (vi) Nickerson, Kramer, Lowenstein, Nessen, Kamim & Soll ("NKL").

PURCHASE AGREEMENT

Recitals

A. The Initial Sellers are among those who have participated in one or more of eight joint ventures, each of which beneficially owns a parcel of real property located in New Jersey; a list of the joint ventures, identified by the location of its property, by the date of each joint venture agreement, by the approximate acreage of the property owned by that joint venture, and by the names and percentage shares of the persons who constitute the joint venturers is Schedule A hereto.

B. Each of the joint ventures was formed to acquire, to hold, and, in due course, to resell the real property now owned by it.

C. Many of the Initial Sellers are plaintiffs and intervening plaintiffs in an action entitled Neimand, et al. v. Mendon Properties, Inc., et al., 74 Civ. 970 (EN) (the "Litigation"), commenced in mid-1974 in the United States District Court for the Eastern District of New York, and pending there at the present time; Vogel, Sy Vogel Associates, Eugene Rodin, Bruce Rodin and Boklan and the Corporations are among the defendants in the Litigation.

D. In general, the amended complaint in the Litigation alleges that the defendants engaged in wrongful conduct in connection with the formation and management of each of the joint ventures; the amended complaint seeks rescission, monetary damages and other relief on behalf of the Initial Sellers.

E. The defendants in the Litigation deny that they have engaged in any wrongdoing, but, nonetheless, wish to settle the Litigation and to resolve their differences with the Initial Sellers and with such other owners of interests in the joint ventures as choose to become parties to this agreement, so as to mitigate the expense and uncertainty of suit and the inconvenience attendant upon the Litigation.

F. The Initial Sellers also wish to settle the Litigation, so as to free themselves of any ongoing financial obligations for the expenses associated with the properties owned by the joint ventures and so as to rid themselves of the costs and uncertainty of suit and the inconvenience attendant upon the Litigation itself.

G. This agreement is designed to provide for the purchase by Vogel and Eugene Rodin of the interests in the joint ventures of the Initial Sellers and such others as elect to join herein; to secure the payment of the purchase price for such interests in a manner acceptable to the Sellers, as here-

after defined; to make arrangements for the payment of future carrying charges upon the real properties owned by the joint ventures; to provide for the disposition to third parties of the real property owned by the joint ventures; to permit other persons now owning interests in the joint ventures to avail themselves of the settlem[illegible] provided for herein; to enable Vogel, Eugene Rodin, Bruce Rodin, Boklan and others to obtain the release of the claims asserted against them both in the Litigation and otherwise; to provide for the withdrawal by the Sellers from the joint venture agreements and to substitute therefor the rights provided in this agreement; and to deal with other matters incidental to, or appropriate in connection with, the foregoing.

Now, therefore, in consideration of the mutual promises contained in this agreement, the parties agree as follows:

1. Definitions. As used in this agreement, the terms set forth below shall mean:

1.1. The "South Jersey Properties" are the parcels of real property purchased under the joint venture agreements executed approximately July 1, 1971, June 27, 1971 and January 1, 1972, and consisting of approximately 109, 150 and 222 acres, respectively; they are the first three properties shown on Schedule A hereto.

1.2. The "North Jersey Properties" are the parcels of real property purchased under the joint venture agreements dated January 31, 1972, March 22, 1972, October 17,

1972, September 20, 1972 and October 31, 1972, and consisting of approximately 102, 158, 196, 221 and 250 acres, respectively; they are the last five properties shown on Schedule A hereto.

1.3. The "Properties" are the South Jersey Properties and the North Jersey Properties as a group; the Properties individually are referred to by their approximate acreage, as, for example, the "109 Property."

1.4. The "Initial Sellers" are the persons and the entity so defined on page 1 of this agreement, provided, however, that any of such persons who fails to execute this agreement by the Effective Date shall not thereafter be an Initial Seller, but shall become either an Additional Seller or a Non-Seller, as the case may be. The "Additional Sellers" are the owners of interests in any one or more of the joint ventures, other than the Initial Sellers, as above defined, Vogel, Eugene Rodin, and Bruce Rodin, who elect to sell their interests to the Purchasers and who evidence such election in accordance with section 3 hereof; the "Sellers" are the Initial Sellers and the Additional Sellers as a group and any transferee of either of them under subsections 24.5 and 24.6 hereof. A "Seller" is any one of the Sellers.

1.5. The "joint venture agreements" are all of the agreements identified in Schedule A hereto as a group; the "joint ventures" are the entities existing by reason of the joint venture agreements; the phrase the "joint ventures" is sometimes hereafter used interchangeably with the "Properties."

1.6. Sy Vogel Associates and Seymour Vogel are, together, "Vogel;" Eugene Rodin is "Rodin;" Bruce Rodin is "Bruce;" Vogel and Rodin, together, are the "Purchasers;" Vogel, Rodin, Bruce and Boklan are, together, the "Defendants"; and the "Corporations" are the entities so defined on page 1 of this agreement.

1.7. The "Litigation" is the action entitled Neimand, et al. v. Mendon Properties, Inc., et al., 74 Civ 970 (EN), pending in the United States District Court for the Eastern District of New York.

1.8. The "Effective Date" is the date upon which Messrs. Lipper, Lowey & Dannenberg and Bernard Kanton, Esq. (hereafter, together, "Dannenberg"), attorneys for the Initial Sellers, deliver to NKL, attorneys for Rodin, one or more counterparts of this agreement executed by Initial Sellers who, in the aggregate, paid not less than eighty percent of the Initial Invested Capital, as defined in subsection 6.1, invested in all of the joint

ventures by all of the Initial Sellers named on page 1 hereof.

1.9. The "Closing Date" is the day that is ten days following the Effective Date, unless such date is a Saturday, Sunday or holiday, in which event the Closing Date is the next regular business day following such tenth day, provided, however that the Closing Date may be accelerated if Dannenberg, NKL, and Rogers & Wells so agree.

1.10. The "South Jersey settlement date" is June 30, 1977; the "North Jersey settlement date" is September 30, 1977.

1.11. The "Fiscal Agent" is the certified public accounting firm of Charles Hecht & Company, or such successor as shall be selected in accordance with subsection 15.3 hereof.

1.12. The "Indianapolis collateral" is the second of the two properties described in Schedule B hereto; the "California collateral" is the first of the two properties described in Schedule B hereto; the Indianapolis collateral and the California collateral are, together, the "Additional Collateral." Vogel's $66,203 interest as mortgagee in the mortgage upon the 109 Property dated November 25, 1970 in the prin-

cipal amount of $107,085 from Hy Pogash and Burton Bronsther to Tamerlane Properties, Inc. is the "109 collateral."

1.13. The "Front Money Contributions" are the aggregate of the amounts to be paid to NKL and to the Fiscal Agent by the Defendants in accordance with section 5 hereof.

1.14. "Carrying Charges" with respect to a Property or with respect to the Additional Collateral are the amounts payable on account of (a) real estate taxes and interest or penalties with respect thereto; (b) mortgage interest and amortization; and (c) insurance premiums and any other expenses incidental to the ownership of the property. Notwithstanding the foregoing, Carrying Charges with respect to a Property shall not include any expenditure incurred in connection with the rezoning or development thereof (as, for example, but not by way of limitation, for access roads, sewerage facilities, or legal fees upon rezoning applications), unless such expenditure shall be approved in writing by Sellers who, in the aggregate, contributed not less than two-thirds of the Initial Invested Capital contributed by all of the Sellers in the joint venture owning such Property.

1.15. "Qualifying Payments" are the unpaid portion of the sums required (i) to be paid by each Initial Seller and by each Additional Seller or (ii) to be deducted from the Individual Sales Price, as defined in subsection 4.2 hereof, payable to each such Seller pursuant hereto on account of the preexisting obligation

of each such Seller to pay his pro rata share of the Carrying Charges incurred with respect to each Property owned by a joint venture in which he has an interest for the period from the acquisition of such Property to December 31, 1974, provided, however, that there shall be excluded from the Qualifying Payments of each Seller any amounts not heretofore paid by him on account of Carrying Charges upon the mortgages listed on Schedule G hereto. The Qualifying Payments, if any, of each joint venturer are set forth in Schedule C hereto.

1.16. "Non-Sellers" are the participants in any one or more of the joint ventures, as shown on Schedule A, other than those Initial Sellers who execute this agreement, the Additional Sellers, and the Defendants, provided, however, that one-half of the share owned by Bruce in each of the joint ventures owning North Jersey Properties, as shown on Schedule A, shall be deemed to be the share of a Non-Seller.

1.17. The "Agreement among the Remaining Venturers" is the agreement dated as of July 17, 1975 among Seymour Vogel, Rodin, Bruce, and those other participants in one or more of the joint ventures who execute such agreement and thereby elect to remain as joint venturers rather than to become Sellers under this agreement.

Stated another way, it is the expectation of the parties hereto that each joint venturer in each joint venture, excluding Vogel, Rodin and Bruce, will sign either this agreement or the Agreement among the Remaining Venturers, and, hence, will either be a Seller or a Non-Seller, and, if the latter, will continue to participate in the joint venture in which he has heretofore participated.

1.18. The "Purchase Agreement" is this agreement.

1.19. Additional definitions appear hereafter in this agreement as follows:

(a) "Individual Sales Price," and "Individual Sales Prices" at subsection 4.2 hereof;

(b) "Initial Invested Capital," at subsection 6.1 hereof;

(c) "Fund" and "Funds," at subsection 6.1 hereof;

(d) The "Indianapolis contract" at subsection 9.1 hereof;

(e) "Net Cash to be Realized," at subsection 10.2 hereof;

(f) "Vendor Receipts," at subsection 11.1 hereof;

(g) "Distributions to Non-Sellers" at subsection 11.5. hereof;

(h) "Remaining Properties," at subsection 14.2 hereof.

2. Effectiveness of this agreement; its termination; no admissions.

2.1. This agreement shall be binding upon the Defendants and the Corporations from the date appearing at the head of page 1, provided, however that either Vogel or Rodin may terminate this agreement by written notice to Dannenberg (i) if the Effective Date shall not have occurred within forty-five days after the date appearing at the head of page 1 hereof, or (ii) if, by the Effective Date, all of the joint venturers in all of the joint ventures, other than Vogel, Rodin and Bruce, shall not have elected either to become Sellers under this agreement or Non-Sellers continuing as joint venturers under the Agreement among the Remaining Venturers.

Notwithstanding the provisions of the preceding paragraph, the Purchasers, acting jointly, shall have the right (a) to extend the time within which the Effective Date must occur and (b) to waive the requirement that Initial Sellers who, in the aggregate, paid not less than eighty percent of the Initial Invested Capital, execute this agreement as a precondition to the occurrence of the Effective Date.

2.2. Upon a termination of this agreement, pursuant to subsection 2.1, this agreement shall become void and the rights and obligations of the parties hereunder shall cease. In such event, this agreement shall not be offered or admitted in evidence in the Litigation or in any other suit or proceeding.

2.3. Nothing herein shall be deemed an admission (i) by any of the defendants in the Litigation of any wrongdoing on their part; (ii) by any of the Sellers that they are, or were, obligated under the joint venture agreements to which they were signatories; (iii) by any of the Sellers as to the validity of the mortgages listed on Schedule G hereto or the last seven of those listed on Schedule N hereto with respect to the 109 Property; (iv) by any of the Sellers as to the entitlement of the Defendants to any interest in any of the joint ventures, in any of the Properties or in any mortgages thereon; or (v) by any party as to the interpretation or legal consequences of the joint venture agreements.

2.4. This agreement shall be binding upon (i) the Sellers and the Fiscal Agent from its Effective Date, unless prior to such date it shall have been terminated in accordance with subsection 2.1, and (ii) NKL from the date appearing at the head of page 1.

3. The right of other joint venturers to become Additional Sellers. Those owning interests in any one or more of the joint ventures, other than the Initial Sellers, Vogel, Rodin, and Bruce, may become Additional Sellers by delivering to NKL a notice of their election to become parties to this agreement and to sell their joint venture interests in accordance with the terms hereof. Such notice shall be effective only (i) if delivered by the Effective Date; (ii) if such notice is accompanied by an assignment from such joint venturer of each of his joint venture interests to the Purchasers, with respect to interests in South Jersey Properties, or to Rodin, with respect to interests in North Jersey Properties; and (iii) if such notice is accompanied by delivery to Dannenberg of the releases required by subsections 8.1(1) and 12.2 hereof. Such notices and assignments shall be substantially in the form of Schedule D hereto. Notwithstanding the foregoing, the Purchasers, with respect to interests in South Jersey Properties, and Rodin, with respect to interests in North Jersey Properties, shall have the right to waive the requirements of clauses (i) and (iii) of this section, or either of them, so as, among other things, to permit a joint venturer to become an Additional Seller subsequent to the Effective Date.

NKL shall inform Dannenberg of any notices received by it under the preceding paragraph of this section.

Joint venturers who become Additional Sellers shall be deemed parties to this agreement from its Effective Date, but shall be bound hereby only from the date of delivery to NKL of a notice in conformity with this section.

4. Purchase of the interests of the Sellers.

4.1. At the Closing the Purchasers shall purchase from the Sellers their interests in the joint ventures owning the South Jersey Properties, and Rodin shall purchase from the Sellers their interests in the joint ventures owning the North Jersey Properties. Thereafter, the Purchasers and Rodin, respectively, may purchase from joint venturers who elect to become Additional Sellers in accordance with section 3 hereof the interests of such Additional Sellers in the South Jersey and North Jersey Properties.

4.2. The purchase price to be paid by the Purchasers or by Rodin, as the case may be, to each Seller for each of his joint venture interests shall be the sum of:

(a) The Seller's initial cash contribution to such joint venture;

(b) The Seller's aggregate Carrying Charge payments and Qualifying Payments, if any, with respect to such joint venture; and

(c) Interest on (a) and (b) above at the rate of 7% for the first year, 7% for the second year, 6% for the third year, and 5% for the fourth year; no interest shall be payable for any period between the end of the fourth year, if applicable, and the South Jersey and North Jersey settlement dates or the date of entry of a judgment in favor of the Sellers pursuant to section 18 hereof, whichever first occurs.

The sum of (a) (b), and (c) is hereafter referred to as a Seller's "Individual Sales Price;" the aggregate of the Individual Sales Prices for all Sellers in a joint venture are the "Individual Sales Prices" with respect to that venture. The initial cash contributions, the aggregate Carrying Charges, the Qualifying Payments, and the dates from which interest upon such contributions and charges are to be computed with respect to each

joint venture and each venturer therein (other than Rodin, Vogel and Bruce) are set forth in Schedule C hereto. Interest upon each Qualifying Payment that is made prior to the receipt by a Seller of his Individual Sales Price shall run from the date that such payment is made.

4.3. Payment of the Individual Sales Prices shall be made by the Purchasers or on their behalf in cash or by certified or bank cashier's check to all Sellers of interests in joint ventures owning South Jersey Properties on (i) the South Jersey settlement date, or (ii) with respect to any South Jersey Property disposed of in accordance with section 10 hereof, at the date and to the extent specified in section 11, whichever shall first occur. Payment of the Individual Sales Prices shall be made by Rodin or on his behalf in cash or by certified or bank cashier's check to Sellers of interests in joint ventures owning North Jersey Properties on (i) the North Jersey settlement date, or, (ii) with respect to any North Jersey Property disposed of in accordance with section 10 hereof, at the date and to the extent specified in section 11, whichever shall first occur.

Notwithstanding the foregoing provisions of this subsection, in the event that both Vogel and Rodin (i) shall file voluntary petitions in bankruptcy, effect assignments for the benefit of creditors, or initiate other insolvency proceedings as to themselves or (ii) shall suffer involuntary

petitions in bankruptcy to be filed against them and to remain pending concurrently and undismissed for more than sixty days after their filing, the North Jersey and South Jersey settlement dates shall be accelerated to the date of the filing of the second of such voluntary petitions, to the date of the granting of the second of such assignments, to the date of the initiation of the second of such other proceedings, or the date that is sixty one days after the filing of the second of such involuntary petitions, whichever is applicable.

4.4. The Individual Sales Price payable to each Seller pursuant to this section shall be reduced to the extent and under the circumstances specified in subsections 11.2 and 16 hereof.

4.5. The Purchasers or Rodin, as the case may be, may at any time prepay to all of the Sellers in any one or more of the joint ventures the whole or any part of their Individual Sales Prices.

5. Front Money Contributions; the escrow prior to Closing.

5.1. In addition to the amounts required to be paid by the Defendants under other sections of this agreement, they shall pay as Front Money Contributions an aggregate of $750,000, provided, however, that such Contributions shall be reduced to the extent and in the

circumstances provided in subsections 5.2, and 5.3 hereof. Such Contributions shall be paid in three installments as follows:

(a) $300,000 delivered to NKL as escrow agent upon the signing of this agreement by the Defendants;

(b) $225,000 to be delivered to the Fiscal Agent six months after the Closing Date, and

(c) $225,000 to be delivered to the Fiscal Agent one year after the Closing Date.

The Front Money Contributions shall be held and utilized by NKL, prior to the Closing, in accordance with subsection 5.4, and by the Fiscal Agent, thereafter, in accordance with sections 6, 7, 11, 12, 13, 14, 15, 16 and 19 hereof.

5.2 The Front Money Contributions payable upon the signing of this agreement pursuant to subsection 5.1(a) shall be reduced by the sum of (i) the amount paid by Vogel and Rodin on account of Carrying Charges for the Properties with respect to the period from January 1, 1975 to the date of this agreement, and (ii) the amount of Carrying Charges advanced by Rodin and Vogel that were payable, but not paid, by other participants in the joint ventures with respect to 1974. Lists of such payments, for the period from January 1, 1975 to the date of this agreement, and for 1974, respectively, are Schedules E and L hereto.

5.3. Notwithstanding the provisions of subsection 5.1 hereof, if, prior to the dates upon which the Front Money Contributions required to be paid pursuant to subsections 5.1(b) and (c) hereof, or the latter thereof, become due,

(a) The Individual Sales Prices are paid in full to all of the Sellers with respect to the joint ventures owning South Jersey Properties, in accordance with section 11 hereof, then the Front Money Contributions to be paid pursuant to subsections 5.1(b) and (c) hereof, or the latter thereof, as the case may be, shall be reduced to $94,000 each, and such reduced Contributions shall be allocated among the Funds, as defined in subsection 6.1 hereof, for the North Jersey Properties, in accordance with the provisions of sections 6 and 14 hereof;

(b) The Purchasers or Rodin, as the case may be, shall make any payments to the Fiscal Agent pursuant to subsection 7.2 hereof, then the Front Money contributions to be paid pursuant to subsections 5.1(b) and (c) hereof, or the latter thereof, as the case may be, as reduced pursuant to subparagraph (a) of this subsection, shall be further reduced by an amount equal to the aggregate of all such payments;

(c) Interest shall accrue upon the 109 collateral, then the Front Money Contributions to be paid pursuant to

subsections 5.1(b) and (c) hereof, or the latter thereof, as the case may be, as reduced pursuant to subparagraph (b) of this subsection, shall be further reduced by an amount equal to any such accrued interest, but in no event more than $4,634.21; and

(d) Any of the participants in the joint ventures whose names are listed on Schedule L shall elect to become Non-Sellers, the Front Money Contributions to be paid pursuant to subsection 5.1(b) hereof, as reduced pursuant to the preceding subparagraphs of this subsection, shall be increased by the aggregate amount advanced by Rodin and Vogel on behalf of such particpants, as shown on such schedule.

Nothing in this subsection shall diminish or abrogate the obligation of the Purchasers or Rodin, as the case may be, to make any payments required to be made pursuant to subsection 7.2 hereof.

5.4 The Front Money Contributions delivered by the Defendants to NKL upon the signing of this agreement shall be held by it, as escrow agent, until the Closing and shall be invested in accordance with subsection 6.3 and utilized for the payment of Carrying Charges in accordance with section 7 hereof. Such Contributions, as augmented by income from their investment and to the extent not utilized for Carrying Charges prior to the Closing, shall be delivered

to the Fiscal Agent at the Closing, together with an accounting by NKL for the moneys so utilized.

NKL shall obtain the consent of the Defendants or their counsel to the payment of Carrying Charges under this subsection.

In the event that this agreement shall be terminated pursuant to subsection 2.1 prior to the Closing NKL shall redeliver to the Defendants the moneys theretofore delivered to it under this section, as augmented by any income therefrom and as reduced by the utilization thereof in the payment of Carrying Charges.

6. The establishment of a fund for each Property.

6.1. Upon the delivery to the Fiscal Agent of the Front Money Contributions deliverable by NKL at the Closing, the Fiscal Agent shall establish a fund for each of the Properties (hereafter the "Fund" and collectively the "Funds"). In the first instance, the Fund for each Property shall be in an amount that bears the same proportion to the Front Money Contributions paid pursuant to subsection 5.1(a) as the Initial Invested Capital with respect to the joint venture owning such Property bears to the aggregate Initial Invested Capital in all of the joint ventures. Thus, the formula is:

$$\frac{\text{Fund for each Property}}{\text{Front Money Contributions}} = \frac{\text{Initial Invested Capital with respect to such Property}}{\text{Aggregate Initial Invested Capital in all joint ventures}}$$

The "Initial Invested Capital" with respect to each Property and the joint venture owning it is the money actually paid in the aggregate by the joint venturers, other than Vogel, Rodin and Bruce, at or about the time of the inception of the venture to purchase the Property owned by such joint venture and to pay the expenses incidental to such purchase; in other words, the Initial Invested Capital with respect to each Property is the sum of all of the initial cash contributions to the joint venture owning such Property, as the phrase "initial cash contributions" is used in subsection 4.2 hereof. The Initial Invested Capital with respect to each Property and the joint venture owning it, the aggregate Initial Invested Capital with respect to all of the Properties, and the percentage of the Front Money Contributions to be allocated to each Property, in the first instance, is set forth in Schedule F hereto.

6.2. The Funds shall be augmented, from time to time, by the further Front Money Contributions required to be made pursuant to subsection 5.1(b) and (c); by the income realized, in accordance with subsection 6.3, from the investment of those moneys in the Funds not immediately needed for Carrying Charges upon the Properties; by the additional moneys paid by Non-Sellers to the Fiscal

Agent under the Agreement among the Remaining Venturers; by the additional moneys paid to the Fiscal Agent pursuant to sections 7.2, 8, 11.4, 13.2, 13.3 and 16 hereof; by any Qualifying Payments made by Sellers; and by all allocations and reallocations of moneys pursuant to the provisions of section 14 hereof.

6.3. Those moneys in the Funds which, in the sole judgment and discretion of the Fiscal Agent, are not needed in connection with the Properties shall, in the discretion of the Fiscal Agent (i) be invested in whole or in part by the Fiscal Agent in United States government securities guaranteed by the full faith and credit of the United States, in certificates of deposit issued by a commercial bank or banks located in New York City and having capital and surplus of not less than fifty million dollars, or in a so-called liquid asset fund or funds having asscts of not less than fifty million dollars, or (ii) be maintained in a savings account or accounts. The income from such investments shall be allocated among the Funds in accordance with section 14 hereof. For purposes of management and investment the money in the Fund for each Property may be combined with that in the Funds for the other Properties.

7. Payment of Carrying Charges from the Funds.

7.1. The Purchasers (with respect to the South Jersey Properties) and Rodin (with respect to the North Jersey Properties) shall be liable for the payment of all Carrying Charges with respect to the Properties for the period from January 1, 1975 until the South Jersey or North Jersey settlement dates, whichever is applicable, or, with respect to any Property disposed of pursuant to section 10 hereof, until the date of such disposition, whichever is earlier. The Sellers shall have no liability for the payment of such Carrying Charges, except to the extent provided in section 16.

7.2. Except as provided in subsection 7.3, the Fiscal Agent shall make timely payment of all Carrying Charges out of the moneys in the Fund established and maintained with respect to each Property. At any time that (i) Carrying Charges are required to be paid with respect to a Property, (ii) the Fund for such Property lacks sufficient money to enable the Fiscal Agent to make such payment, and (iii) sufficient moneys are not promptly made available to the Fiscal Agent under subsection 16.2 to pay such Charges, it shall so notify the Purchasers (with respect to a South Jersey Property) or Rodin (with respect to a North Jersey Property) in writing, with a copy to Dannenberg, and the Purchasers or Rodin, as the case may be, shall, within ten days after such notification, pay to the Fiscal Agent for deposit in such Fund the

moneys needed to enable the Fiscal Agent to pay such Carrying Charges, together with any interest or penalties due thereon for late payment.

Notwithstanding the foregoing paragraph, the Fiscal Agent shall have no responsibility for the payment of Carrying Charges required to be paid with respect to a Property, except to the extent that moneys are available in the Fund for such Property.

7.3. No principal payments or amortization upon the mortgages issued to Tamerlane Properties, Inc., Boklan, Samuel L. Grimes, and Frank and Margaret Peneter, as mortgagees, in the principal amounts of $107,085, $155,340, $53,080, and $75,000, respectively, upon the 109 Property shall be made by the Fiscal Agent out of the Fund for such Property. Interest accruing upon the 109 collateral shall be first applied by the Fiscal Agent in accordance with subsection 5.3(c) and thereafter shall be held by the Fiscal Agent as a part of the 109 collateral.

In the event that the mortgages referred to in the preceding paragraph, or any of them, shall be refinanced prior to the date upon which the principal is presently due thereon, and the mortgages issued upon such refinancing provide for the payment of interest at a greater rate, or upon a larger

principal sum, than that now applicable upon such mortgages, or provide for principal payments or amortization thereon prior to the South Jersey settlement date, such interest, to the extent that it exceeds that presently payable upon such mortgages, and such principal payments or amortization shall not be made by the Fiscal Agent out of the Fund for the 109 Property, but may only be made by it from additional moneys turned over to it by the Purchasers specifically for the purpose.

8. The Closing.

8.1. The Closing shall be held at 10 A.M. on the Closing Date at the offices of NKL, 919 Third Avenue, New York, New York. At the Closing:

(a) NKL shall deliver to the Fiscal Agent the Front Money Contributions then in its custody pursuant to subsection 5.4 hereof, together with an accounting of the moneys utilized by it in the payment of Carrying Charges between the date of this agreement and the Closing Date.

(b) The Purchasers (with respect to the South Jersey Properties) and Rodin (with respect to the North Jersey Properties) shall:

(i) Cause the record owners of each of the Properties to deliver to the Fiscal Agent a quitclaim deed transferring title to each

Property into the name of the Fiscal Agent to be held in accordance with this agreement;

(ii) Cause the owners of the mortgages set forth on Schedule G hereto to deliver to Dannenberg the originals of each such mortgage and satisfactions thereof substantially in the form shown on Schedule H hereto;

(c) The Defendants shall deliver to the Fiscal Agent quitclaim deeds executed by them transferring to the Fiscal Agent such title as they may have in any of the Properties.

(d) As evidence of the security interests transferred to the Fiscal Agent under this agreement, Vogel and Rodin shall deliver to Dannenberg and shall cause Dykstra Properties, Inc. to deliver to Dannenberg multiple original UCC-1 forms executed by them with respect to their interests in the Indianapolis collateral and in each of the joint ventures, including the interests acquired by them under this agreement and the Agreement among the Remaining Venturers, and Bruce shall deliver to Dannenberg multiple original UCC-1 forms executed by him with respect to one-half of his interests in each of the joint ventures in which he is a participant. Such forms shall be in the form of Schedule M hereto.

(e) The Sellers, or their duly appointed attorney-in-fact, shall deliver to the Fiscal Agent termination statements under the Uniform Commercial

Code executed by them or by such attorney-in-fact with respect to the interests of Vogel, Rodin, Bruce, and Dykstra Properties, Inc. that are the subject of the UCC-1 forms described in the immediately preceding subparagraph. Such termination statements shall be in the form of Schedule I hereto.

(f) The Purchasers shall deliver and shall cause Dykstra Properties, Inc. to deliver to the Fiscal Agent an assignment of their rights in the Indianapolis Collateral to the Fiscal Agent;

(g) Rodin shall deliver to the Fiscal Agent and Vogel shall cause to be delivered to the Fiscal Agent a quitclaim deed transferring title to the California Collateral to the Fiscal Agent;

(h) Dannenberg shall deliver to each of the defendants' counsel of record in the Litigation a notice of dismissal of the Litigation with prejudice with respect to defendants Sylvia Rodin, William Birnbaum, Arthur Vogel and Samuel Grimes;

(i) Each Seller shall deliver to the Fiscal Agent an assignment of each of his joint venture interests to the Purchasers, as to South Jersey Properties, and to Rodin, as to North Jersey Properties. Such assignments shall be in the form of Schedule K hereto;

(j) From the moneys in the Funds, the Fiscal Agent shall deliver to Dannenberg for distribution to the Sellers a check in an amount equal to the aggregate of that theretofore paid by the Sellers as Carrying Charges upon the Properties for the year 1975. A list of such payments with respect to the participants in each of the joint ventures, other than Vogel, Rodin and Bruce, is Schedule J hereto;

(k) The Sellers shall deliver to NKL and Rogers & Wells and NKL and Rogers & Wells shall deliver to the Sellers the general releases to be exchanged pursuant to subsection 12.2.

(l) Each Seller shall deliver to Dannenberg, general releases in favor of the Defendants and of the Corporations.

(m) Vogel shall deliver to the Fiscal Agent an assignment of his interest in the 109 collateral.

(n) Vogel and Rodin shall deliver to the Fiscal Agent assignments of their interests in each of the joint ventures in which each of them is a participant, including the interests acquired by them under this agreement and the Agreement among the Remaining Ventures; Bruce shall deliver to the Fiscal Agent an assignment of one-half of his interest in each of the joint ventures in which he is a participant.

(o) Vogel shall deliver to the Fiscal Agent a license of (i) the rights of Sy Vogel Associates under the resolutions, adopted January 28, 1972 of the Township Committee of the Township of Winslow, New Jersey, with respect to a preliminary site plan relating to the South Jersey Properties; and (ii) the rights of Sy Vogel Associates to a sewer and water franchise awarded by the Township Committee of the Township of Winslow, New Jersey, at a meeting on July 13, 1973.

(p) Boklan shall assign to the Fiscal Agent his rights under an agreement dated January 28, 1972 among John Rigolizzo, Jr., Helen Rigolizzo and him under which he was granted a right of first refusal to purchase certain real property.

8.2. Promptly after the Closing the Fiscal Agent and Dannenberg, whichever is applicable, shall cause to be recorded or filed, as the case may be, the instruments or memoranda thereof, delivered to them at the Closing pursuant to subparagraphs (b)(i), (b)(ii), (c), (d), (f), (g), (h), (m) and (p) of subsection 8.1 hereof.

8.3 The costs (including, but not limited to, attorneys' fees and filing fees) incurred by the Fiscal Agent in recording the instruments to be recorded pursuant to subsection 8.2 shall be paid from the Funds and shall be allocated

among the Funds to which such costs relate. The costs (excluding attorneys' fees) incurred by Dannenberg in recording such instruments shall also be paid from the Funds and allocated among the Funds to which such costs relate. Except as provided in the preceding provisions of this subsection, any costs incidental to the Closing (but excluding any legal fees for Dannenberg) shall be paid by the Defendants.

9. Representations, warranties and covenants.

9.1. Each of the Defendants represents and warrants, as to those representations and warranties applicable to him, that:

(a) Subject to the claims asserted against him in the Litigation, subject to the rights and obligations created by this agreement and by the Agreement among the Remaining Venturers, and, with respect to Bruce, subject to the rights of Judith Rodin, he is the owner, free of any liens or encumbrances, of the proportionate interest set opposite his name in each of the joint ventures shown on Schedule A hereto.

(b) Each of the Properties is owned of record by the person or entity stated on Schedule N hereto, and the only mortgages encumbering each such Property are those set forth on such schedule.

(c) To the best of his knowledge, no Property is subject to any liens or encumbrances of record, except as set forth on Schedule N hereto, and except as may exist by reason of unpaid Carrying Charges or contractual obligations disclosed on the schedules to this agreement.

(d) To the best of his knowledge, no Carrying Charges with respect to any of the Properties are due or overdue as of the date of this agreement, except as set forth on Schedule O hereto.

(e) To the best of his knowledge, none of the Properties nor of the joint ventures owning them is obligated under any contract, except (i) the joint venture agreements; (ii) this agreement; (iii) the Agreement among the Remaining Venturers; (iv) the mortgages shown on Schedule N hereto; and (v) the agreements set forth in Schedule P hereto.

(f) To the best of his knowledge, no violations of law exist with respect to any of the Properties, except that alleged in a letter dated May 20, 1975 from the building inspector of the Township of Winslow, New Jersey to Boklan.

(g) To the best of his knowledge, except as disclosed in this agreement or in the schedules to it, each of the joint ventures has good and marketable title to the Property owned by it and no contractual or legal restrictions exist prohibiting the sale of such Property.

(h) The Purchasers are the beneficial contract vendees of the Indianapolis collateral under an agreement dated October 10, 1969 between Bill C. Duncan, Mary F. Duncan, Eugene L. Henderson, Mary L. Henderson, Robert L. Pritchard and Oretha Pritchard, as vendors, and Dykstra Properties, Inc., as vendee (the "Indianapolis contract"); the portion of the purchase price remaining unpaid under such contract is $197,233.49, plus interest.

(i) To the best of the Purchasers' knowledge, the Indianapolis collateral is not subject to any liens or encumbrances, other than the Indianapolis contract, and is not subject to any contractual restrictions or obligations, other than as disclosed on Schedule P hereto.

(j) To the best of the Purchasers' knowledge, all Carrying Charges due as of the date of this agreement with respect to the Indianapolis collateral have been paid and there are no delinquencies thereon.

(k) The Purchasers are in the process of implementing the current zoning of the Indianapolis collateral, designated as PK-2, as further described in the appraisal dated March 27, 1975, a copy of which has been furnished to Dannenberg, to permit the development of the property for multi-family use.

(l) Other than the appraisal dated March 27 1975, neither of the Purchasers has any present business relationship with the appraiser who rendered such appraisal.

(m) To the best of the Purchasers' knowledge, no violations of law exist with respect to the Indianapolis collateral.

(n) To the best of the Purchasers' knowledge, the Indianapolis contract is a valid and binding obligation of the contract vendors and the Purchasers have the right to take title to the Indianapolis collateral upon the payment of the balance of the purchase price due thereon or to sell or assign the rights of the contract vendee under such contract, subject only to the obligations of such contract.

(o) Rodin is the record owner and the Purchasers are the beneficial owners of the California collateral and the only mortgage encumbering such collateral is that set forth on Schedule N hereto.

(p) To the best of the Purchasers' knowledge, the California collateral is not subject to any liens or encumbrances, except as set forth on Schedule N hereto.

(q) To the best of the Purchasers' knowledge, no violations of law exist with respect to the California collateral.

(r) To the best of the Purchasers' knowledge, they have good and marketable title to the California collateral, subject only to the mortgage set forth on Schedule N hereto and no contractual or legal restrictions prohibit the sale of such property.

(s) To the best of his knowledge, the schedules annexed to this agreement are substantially correct.

(t) To the best of his knowedge, the participants in each of the joint ventures, other than Vogel, Rodin and Bruce, have made or caused to be made the initial cash contributions set opposite their names in column (a) of Schedule C hereto, and, except as set forth in column (e) of such schedule, each such participant has paid or caused to be paid his share of Carrying Charges from the inception of each of the joint ventures through December 31, 1974.

(u) Vogel is the beneficial owner of a $66,203 interest in the mortgage upon the 109

Property dated November 25, 1970 in the principal amount of $107,085 from Hy Pogash and Burton Bronsther to Tamerlane Properties, Inc.

9.2. The representations and warranties of the defendants contained in subsection 9.1 hereof shall be true on the Closing Date and shall survive the Closing.

9.3. Each of the Sellers represents and warrants that he is the owner, free of any liens or encumbrances, of the proportionate interest set opposite his name in each of the joint ventures shown on Schedule A hereto, that he has good and marketable title to each interest being transferred by him to the Purchasers or to Rodin hereunder, and, subject to the terms of the existing joint venture agreements, that there are no contractual or legal restrictions prohibiting such transfer. The representations and warranties in the preceding sentence shall be true on the Closing Date and shall survive the Closing. In the event of a breach by any Seller of the representations and warranties made by him in this subsection, such Seller shall not be entitled to receive his Individual Sales Price with respect to the joint venture interest to which the breach relates, unless and until such breach has been cured.

9.4. From the date hereof to the Closing Date, the Purchasers, as to the South Jersey Properties and the Additional Collateral, Rodin, as to the North Jersey Properties, and Vogel, as to the 109 collateral, shall not (i) except as permitted by section 10 hereof or with the consent of Dannenberg, sell any of the Properties, any of the Additional Collateral, or the 109 collateral; (ii) sell or assign their interests in any of the joint ventures; (iii) except with the consent of Dannenberg, enter into any contracts obligatory on any of the joint ventures, any of the Properties, any of the Additional Collateral or the 109 collateral; or (iv) engage in any other acts which materially impair the value of any of the Properties, any of the Additional Collateral or of the 109 collateral.

9.5. The Sellers acknowledge that Dannenberg has been furnished by the Defendants or their attorneys with copies, if any, of the policies of title insurance owned by the joint ventures with respect to each of the Properties, copies of the policies of title insurance owned by the Purchasers with respect to the Additional Collateral and with copies of guaranteed title searches with respect to each of the Properties and with respect to the Additional Collateral. The Defendants represent that, since the dates of such searches, to the best of their knowledge no changes

of record have occurred affecting title to any of the Properties or to any of the Additional Collateral.

9.6 Each of the Sellers acknowledges that, in electing to enter into this agreement, he has not been influenced by the current, potential, or probable value upon sale of the Properties or of the Additional Collateral and that he has not relied upon any statements, promises, or representations of any kind of any of the defendants in the Litigation or of their attorneys, except as contained in this agreement and the schedules to it.

10. The disposition of Properties.

10.1. Notwithstanding the provisions of section 13, and subject to the rights of Non-Sellers, so long as no event of default is occurring and remains uncured:

(a) The Purchasers, acting jointly, shall have the right, until the South Jersey settlement date, to sell the South Jersey Properties, or any of them, upon such terms as they deem appropriate; and

(b) Rodin shall have the right, until the North Jersey settlement date, to sell the North Jersey Properties, or any of them, upon such terms as he deems appropriate;

provided, however, that any sale shall comply with the following requirements:

(c) No sale or contract to sell a Property shall be made, unless the Net Cash to be Realized from such sale, as defined in subsection 10.2, plus the moneys in the Fund with respect to such Property at the date of sale, will equal not less than 70% of the sum of (i) the Initial Invested Capital with respect to such Property, as set forth in Schedule F hereto; and (ii) the Carrying Charges paid through December 31, 1974 with respect to such Property as set forth in column (c) of Schedule C hereto, exclusive of those portions of such Initial Invested Capital and of such Carrying Charges that were actually contributed by Non-Sellers. Notwithstanding the foregoing sentence, such a sale or contract to sell a Property may be made, if the terms of sale are approved in writing by those Sellers who are entitled to receive at least two-thirds of the aggregate Individual Sales Prices with respect to the Property that is the subject of the sale;

(d) No sale or contract to sell a Property shall be made to any vendee in which either of the Purchasers, as to the South Jersey Properties, or Rodin, as to the North Jersey Properties, owns any interest, direct or indirect, unless the Net Cash to be Realized from such sale, plus the moneys in

the Fund with respect to such Property at the date of sale, will equal not less than 110% of the then unpaid portion of the Sellers' Individual Sales Prices with respect to such Property, as defined in subsection 4.2. Notwithstanding the foregoing sentence, such a sale or contract to sell a Property may be made, if the terms of sale are approved in writing by those Sellers who are entitled to receive at least two-thirds of the aggregate Individual Sales Prices with respect to the Property that is the subject of the sale to be approved; and

(e) No closing of title upon the sale of a Property shall be effected, unless Dannenberg shall be given not less then ten business days notice thereof, as well as any information or documents with respect thereto that he may reasonably request; and

(f) No sale of a Property shall be made unless Dannenberg shall be given a copy of the contract of sale with respect thereto within five days after its execution.

(g) Notwithstanding the foregoing provisions of this subsection, but subject to the provisions of section 11 hereof, (i) when the Sellers of interests in the joint ventures owning South Jersey Properties shall all have received the whole of their

Individual Sale Prices, whether pursuant to dispositions of such Properties under this section or otherwise, the right of the Purchasers to sell any such South Jersey Properties then remaining unsold shall be absolute and no longer subject to the limitations of this subsection; and (ii) when the Sellers of interests in joint ventures owning North Jersey Properties shall all have received the whole of their Individual Sales Prices, whether pursuant to dispositions of such North Jersey Properties under this section or otherwise, the right of Rodin to sell any such Properties then remaining unsold shall be absolute and no longer subject to the limitations of this subsection.

10.2. The "Net Cash to be Realized" upon a sale is the cash to be received upon such sale, prior to, or concurrently with, its closing, less the sum of (i) the cash expenses of such sale, including brokerage commissions, legal fees, taxes, insurance, and all other items which reduce the actual cash realized upon the sale, and (ii) the number resulting from the multiplication of the remainder by the decimal that equals the percentage of the joint venture owning such Property that is owned by Non-Sellers. Such percentage shall be computed by reference to the initial cash contributions to such joint ventures as shown in column (a) of Schedule C hereto.

10.3. The net proceeds of a condemnation of any Property, or of any portion thereof, shall be treated in the same fashion as the Net Cash to be Realized upon the sale of a Property, provided, however, that the provisions of subsections 10.1(c), (d), (e) and (f) shall be inapplicable with respect to any condemnation of a Property.

10.4. In addition to the rights afforded by subsection 10.1, the Purchasers, as to South Jersey Properties, and Rodin, as to North Jersey Properties, shall have the right to undertake activities in furtherance of the development of the Properties, including, though not limited to, applying for rezoning, authorizing easements for utility lines and the like, agreeing to dedicate streets, and submitting to governmental agencies plat plans or other documentation, provided, however that the cost of such activities shall not, except as authorized in subsection 1. hereof, be paid by the Fiscal Agent from the Funds but shall be paid by the Purchasers or by Rodin, as the case may be, and provided, further, that neither the Purchasers nor Rodin shall permit such costs to become a lien against any of the Properties.

11. Distribution of the proceeds of dispositions; mortgages received upon dispositions.

11.1. Upon the disposition of a Property pursuant to section 10, the Fiscal Agent shall receive and dis-

burse the cash proceeds of such disposition as promptly as possible and in accordance with this section.

All cash expenses incident to the disposition and all other expenses applicable to the Property that is the subject of the disposition and then accrued and unpaid (for example, though not by way of limitation, fees and expenses of the Fiscal Agent and pro rata amounts due to Non-Sellers) shall first be paid. The Net Cash to be Realized, as defined in subsection 10.2, shall then be distributed on a pro rata basis to the Sellers with respect to such Property in accordance with their Individual Sales Prices, as defined in subsection 4.2. To the extent that the Net Cash to be Realized is insufficient to pay the Sellers the entirety of their Individual Sales Prices, such portion of the moneys then in the Fund with respect to such Property as is required to pay the Sellers the remainder of their Individual Sales Prices shall be distributed to them. If the Net Cash to be Realized plus the moneys then in such Fund are together insufficient to pay all such Sellers the entirety of their Individual Sales Prices, then the Purchasers (with respect to South Jersey Properties) or Rodin (with respect to the North Jersey Properties) shall pay all such Sellers the deficiency at the South Jersey or North Jersey settlement date, whichever is applicable. Any such deficiency shall bear

interest prior to the entry of a judgment pursuant to section 18 hereof only to the extent provided in subsection 4.2(c).

If the Net Cash to be Realized upon the disposition of a Property plus the moneys then in the Fund with respect to such Property is in excess of the Sellers' Individual Sales Prices with respect to such Property, as defined in subsection 4.2, then the portion of such Net Cash to be Realized and the moneys then in such Fund remaining after the payment to the Sellers with respect to such Property of the whole of their Individual Sales Prices shall belong to the Purchasers, in equal shares (as to the South Jersey Properties), and to Rodin and Bruce (as to the North Jersey Properties), but shall continue to be held by the Fiscal Agent and shall be subject to the provisions of section 14. Such portion of the Net Cash to be Realized and such moneys then in the Fund with respect to a Property are, together, hereafter referred to as "Vendor Receipts."

11.2. For purposes of subsections 4.4, 11.1, and 18.2, there shall be deducted from the Individual Sales Price payable to each Seller:

(a) The amount owing by such Seller to the Purchasers or to Rodin, as the case may be, pursuant to section 16 hereof; and

(b) The amount of any Qualifying Payments of such Seller, as set forth in Schedule C hereto, that were not theretofore paid by such Seller.

11.3. Title to any mortgage received upon the disposition of a Property, pursuant to section 10 hereof, shall be taken in the name of the Fiscal Agent and, except for Distributions to Non-Sellers, as defined in subsection 11.5 hereof, shall become further collateral to be held and applied in accordance with the provisions of this agreement.

11.4. Except for Distributions to Non-Sellers, any interest or amortization payments paid to the Fiscal Agent with respect to a mortgage received by the Fiscal Agent (i) upon the disposition of a Property pursuant to section 10 and subsection 11.3 hereof, and (ii) upon the sale of any Additional Collateral, pursuant to subsection 13.3 hereof, and any cash proceeds after expenses, received upon a refinancing pursuant to subsection 13.3, shall augment the Funds with respect to the Remaining Properties, as defined in subsection 14.2 hereof, and shall be allocated among the Funds with respect to the Remaining Properties in accordance with the allocation principles of section 14 hereof.

11.5. "Distributions to Non-Sellers" are the pro rata shares of the cash, of any mortgage received upon the dispositon of a Property, and any other assets owned by a joint venture with respect to a Property that belong, and are distributable, to Non-Sellers by reason of their ownership of a portion of such joint venture.

12. Releases.

12.1. The execution of this agreement by each Seller who executes it by the Effective Date, and the execution of this agreement by each Additional Seller who is permitted to join in this agreement thereafter pursuant to section 3 hereof, shall constitute a general release of all claims that each such Seller and each such Additional Seller has, or may have, against the Defendants, the Corporations, and all present and former officers, directors, agents and employees of each of them, except as to the rights arising in favor of each such Seller and each such Additional Seller under this Agreement.

12.2. In addition to the provisions of subsection 12.1 hereof, each Seller who shall execute this agreement by the Effective Date and each Additional Seller who shall execute this agreement thereafter pursuant

to section 3 hereof, shall deliver, at the Closing, or thereafter, whichever is applicable, a general release in favor of each of William Birnbaum, Sylvia Rodin, Arthur Vogel, and Samuel Grimes who shall tender to him at the Closing or thereafter, whichever is applicable, a general release in favor of such Seller or such Additional Seller.

12.3. Upon the receipt by each Seller of an interest in a joint venture owning a South Jersey Property of the whole of his Individual Sales Price with respect to all such interests and Properties, Dannenberg shall deliver to Vogel and Boklan the general releases in their favor and those in favor of the corporations named in subparagraph (a) of subsection 20.3 hereof that were delivered by the Sellers to Dannenberg at the Closing, and Vogel and Boklan shall deliver to Dannenberg a general release in favor of each Seller.

Upon the receipt by a Seller of the whole of his Individual Sales Price with respect to all of the Properties owned by joint ventures in which he was a participant, Dannenberg shall deliver to those Defendants and those Corporations that have not theret e received a general release pursuant to the preceding paragraph of this subsection or pursuant to subsection 12.2 the general release in their

favor delivered by such Seller to Dannenberg at the Closing, and each such Defendant and each such Corporation shall deliver to Dannenberg a general release in favor of such Seller.

13. The collateral security for the Purchasers' obligations; its management and disposition.

13.1. From and after the Closing, the Fiscal Agent shall hold title to the Properties,to the Additional Collateral, to the 109 collateral, to any mortgages received under subsections 11.3 or 13.3 hereof, to the entirety of the joint venture interests of Vogel and Rodin and to one-half of each of Bruce's joint venture interests as security for the performance by the Defendants of their obligations under this agreement. In addition, the moneys and investments held by the Fiscal Agent in the Funds, as augmented from time to time, to the extent not needed to pay Carrying Charges and not distributed pursuant to this agreement, shall be further security for the performance of such obligations.

Except for dispositions pursuant to section 10 hereof, the Properties shall be sold by the Fiscal Agent only in accordance with the provisions of section 19 hereof and shall be deeded or assigned to the Purchasers or to Rodin, as the case may be, only in accordance with subsection 13.4 hereof. The Additional Collateral shall be sold by the Fiscal Agent only in accordance with the

provisions of subsection 13.3 and section 19 hereof and shall be deeded or reassigned to the Purchasers in whole or part, as the case may be, only in accordance with subsections 13.4 and 13.7 hereof. The 109 collateral shall be sold by the Fiscal Agent only in accordance with section 19 hereof and shall be reassigned to Vogel only in accordance with subsection 13.4 hereof. Any mortgages acquired by the Fiscal Agent pursuant to subsections 11.3 or 13.3 hereof shall be sold by the Fiscal Agent only in accordance with section 19 hereof and shall be deeded or assigned to the Purchasers, to Vogel or to Rodin, in whole or part, as the case may be, only in accordance with subsections 13.4 and 13.7 hereof.

13.2. The Purchasers shall make timely payment of all Carrying Charges with respect to the Indianapolis collateral and/or to the California collateral. Such Carrying Charges shall not, in the ordinary course, be paid from the Funds, but, should the Fiscal Agent, in its sole discretion, make such a payment therefrom to prevent a foreclosure upon the Indianapolis collateral or the California collateral, the Purchasers shall promptly, upon the receipt of a notice from the Fiscal Agent that it has made such a payment (notice of which shall also be given to Dannenberg), reimburse the Funds in an amount equal to such payment.

13.3. So long as no event of default is occurring and remains uncured, the Purchasers shall have the right to sell the Additional

Collateral or to effect the refinancing of the existing mortgage on the California collateral or to finance, or to extend the date of payment of, the portion of the purchase price remaining unpaid upon the Indianapolis contract, provided, however, (i) that the cash proceeds, after expenses, of any such sale, refinancing or extension, and any mortgage received in connection with any such transaction, shall be delivered to, and, when applicable, taken in the name of the Fiscal Agent and substituted as collateral concurrently with the closing of any such transaction, (ii) that Dannenberg shall be given not less than fifteen days notice of any such contemplated sale, refinancing, or extension, as well as any information or documents with respect thereto that he may reasonably request, (iii) that no such sale of the Indianapolis Collateral shall be made for a gross sales price of less than $650,000, and (iv) that the cash portion of the gross sales price payable at the time of closing of title of the Indianapolis collateral or the assignment of the Indianapolis contract, or if the Purchasers shall obtain title to the Indianapolis collateral, upon the closing of a contract to sell the property with a contract vendee, shall be not less than 23% of the gross sales price and that the remainder of such gross sales price shall be payable within not more than six years from the date of such sale with installments of not less than 15.4% of such gross sales price payable annually commencing not more than two years after the date of such sale. Notwithstanding the foregoing provisions of this subsection, the Purchasers shall have the

additional right (i) to obtain the release of the entirety of Indianapolis collateral as collateral under this agreement by the substitution therefor of moneys in the aggregate sum of $700,000 and (ii) to obtain the release of the Indianapolis collateral acre by acre by the substitution therefor of $10,000 for each acre released, provided, however, that after the first release of acreage, all acreage thereafter released shall be contiguous to acreage previously released and either tract 1 or tract 2, as described in the Indianapolis contract, shall be the last acreage released under this subparagraph (ii) of this sentence.

13.4. When the Sellers of interests in the joint ventures owning all of the South Jersey Properties have all received the whole of their Individual Sales Prices, as defined in subsection 4.2 hereof, whether pursuant to distributions under section 11 hereof, at the South Jersey settlement date, or otherwise, Vogel's and Boklan's obligations under this agreement shall terminate, except for their obligations under subsections 15.2 and 15.4 hereof with respect to fees and expenses of the Fiscal Agent or claims arising out of or relating to acts or events preceding the termination of such obligations. Upon such termination the Fiscal Agent, if it still holds title (a) to the Additional Collateral, or to Vogel's half interest in either property constituting such collateral, (b) to any mortgages received as further collateral pursuant to subsections 11.3 or 13.3 hereof (but, with respect to mortgages received under subsection 11.3 hereof, only those received upon the disposition of South Jersey Properties),

(c) to any of the South Jersey Properties, or (d) to the 109 collateral shall, subject to the rights of Non-Sellers, deed or assign Vogel's one-half interest in the Additional Collateral, his one-half interest in any such mortgages, his one-half interest in such Properties, and the entirety of the 109 collateral to him by quitclaim deed or other appropriate instrument. Upon such termination, the Fiscal Agent shall also assign to Vogel each of the joint venture interests belonging to him and assigned or transmitted to the Fiscal Agent pursuant to section 3(ii) and subsections 8.1(i) and (n) and shall deliver to Vogel the termination statement under the Uniform Commercial Code with respect to him that was delivered to the Fiscal Agent at the Closing.

Notwithstanding the preceding paragraph, when the Sellers of interests in the joint venture owning the 109 Property have all received the whole of their Individual Sales Prices, whether pursuant to distributions under section 11 hereof, at the South Jersey settlement date, or otherwise, the Fiscal Agent, if it still holds title to the 109 collateral, shall deed or assign such collateral to Vogel by quitclaim deed or other appropriate instrument.

When the Sellers of interests in the joint ventures owning all of the Properties have received the whole of their Individual Sales Prices, whether pursuant

to distributions under section 11 hereof, at the South Jersey and North Jersey settlement dates, or otherwise, Rodin's and Bruce's obligations under this agreement shall terminate, except for their obligations under subsections 15.2 and 15.4 hereof. Upon such termination the Fiscal Agent, if it still holds title (a) to the Additional Collateral, or any portion thereof, (b) to any mortgages received as further collateral pursuant to subsections 11.3 or 13.3 hereof, or (c) to any of the North Jersey or South Jersey Properties, shall deed or assign Rodin's interests in the Additional Collateral, in any such mortgages, and in such Properties to him by quitclaim deed or other appropriate instrument. For purposes of the preceding sente and subject to the rights of Non-Sellers, Rodin's inter ts shall be one-half of the Additional Collateral and of any mortgages received pursuant to subsection 13.3 hereof with respect thereto; one-half of the South Jersey Properties and of any mortgages received with respect to such Properties under subsection 11.3 hereof; and the entirety of the North Jersey Properties and any mortgages received with respect thereto under subsection

11.3 hereof. Upon the termination of Rodin's obligations under this agreement the Fiscal Agent shall also (i) assign to Bruce each of the joint venture interests assigned to the Fiscal Agent by him pursuant to section 3(ii) and subsection 8.1(n), (ii) assign to Rodin each of the joint venture interests belonging to him assigned or transmitted to the Fiscal Agent pursuant to section 3(ii) and subsections 8.1(i) and (n), (iii) deliver to Rodin and to Bruce the termination statements under the Uniform Commercial Code with respect to them that were delivered to the Fiscal Agent at the Closing, and (iv) deliver to Rodin the termination statement under the Uniform Commercial Code with respect to Dykstra Properties, Inc. that was delivered to the Fiscal Agent at the Closing.

Notwithstanding the preceding paragraph, and subject to the rights of Non-Sellers, when the Sellers of interests in the joint ventures owning all of the North Jersey Properties have all received the whole of their Individual Sales Prices, whether pursuant to distributions under section 11 hereof, at the North Jersey settlement date, or otherwise, the Fiscal Agent, if it still holds title to the California collateral, or to any mortgages received as further collateral pursuant to subsection 13.3 hereof with respect thereto, shall deed or assign Rodin's half interest in such collateral and in any such mortgages to him by quitclaim deed or other appropriate instrument.

13.5. In the event of a condemnation of the Additional Collateral, or any part thereof, the net award shall be taken in the name of the Fiscal Agent and shall be substituted as collateral in lieu of the property condemned.

13.6. The Purchasers shall have the right to refinance the mortgages on the 109 Property referred to in subsection 7.3. Any such refinancing shall be subject to the provisions of the second paragraph of such subsection and shall be carried out in a manner conforming with the provisions of subsection 13.3.

13.7 Notwithstanding the provisions of subsections 13.3 and 13.4 hereof, in the event that (i) the Indianapolis collateral is sold pursuant to subsection 13.3 for a gross sales price of $800,000 or more, (ii) cash of not less than $700,000 shall be substituted as collateral in place of the Indianapolis collateral pursuant to the second sentence of subsection 13.3, whether under the acre-by-acre release provision of such sentence or otherwise, (iii) the Indianapolis collateral is rezoned so as to permit the erection thereon of more than ten residential units per acre or an aggregate of more than 800 residential units, or (iv) the 109 Property is sold and the Sellers of interests in the joint venture owning such Property all receive the whole of their Individual Sales Prices, the Fiscal Agent, if it still holds title to the California collateral or to any mortgages received as further collateral pursuant to subsection 13.3 with respect to

such collateral, shall deed or assign Vogel's one-half interest in such collateral or in any such mortgage to him by quitclaim deed or other appropriate instrument.

14. Allocations and reallocations of collateral before and after Property dispositions; distributions of Vendor Receipts to Vogel and Rodin.

14.1. Until the Sellers with respect to any one of the Properties have received the whole of their Individual Sales Prices, any moneys received by the Fiscal Agent to augment the Funds shall be allocated by it among the Funds in accordance with the allocation formula in subsection 6.1 hereof, except that:

(a) Money paid to the Fiscal Agent pursuant to the second sentence of subsection 7.2 or the second sentence of subsection 13.2 hereof shall be allocated to the Funds to which it is applicable;

(b) Qualifying Payments shall be allocated to the Funds to which they are applicable;

(c) Unless Vogel's half interest in the California collateral shall theretofore have been transferred to him pursuant to subsection 13.7 hereof, money received upon a sale or refinancing of the California collateral pursuant to subsection 13.3 hereof shall first be divided in half; one half shall then be allocated among the Funds for the South Jersey Properties and one half among the Funds for the North Jersey Properties;

(d) Unless Vogel's one half interest in the Indianapolis collateral shall theretofore have been transferred to him pursuant to subsection 13.4 hereof, the first $315,000 of money received upon a transaction pursuant to subsection 13.3 hereof with respect to the Indianapolis collateral shall be allocated to the Fund for the 109 Property; any additional money received in connection with such a transaction shall be allocated among the Funds for the Properties other than the 109 Property in such a fashion that, to the extent possible, 75% of the money received upon such a transaction, including that allocated to the Fund for the 109 Property, shall be allocated among the Funds for the South Jersey Properties and the other 25% thereof shall be allocated among the Funds for the North Jersey Properties;

(e) If Vogel's one half interest in the Indianapolis collateral or his one half interst in the California collateral shall theretofore have been transferred to him pursuant to subsections 13.4 or 13.7 hereof, whichever is applicable, money received upon a sale or refinancing of the Indianapolis collateral or the California collateral pursuant to subsection 13.3 hereof shall be allocated only among the Funds for the North Jersey Properties;

(f) Money reimbursed to the Fiscal Agent by Sellers pursuant to section 16 shall be allocated to each Fund from which it was taken to the extent that it was taken therefrom;

(g) Money received by the Fiscal Agent with respect to the 109 collateral shall be held by it as part of the 109 collateral; and

(h) Reductions or increases in Front Money Contributions pursuant to subparagraphs (b), (c) and (d) of subsection 5.3 shall be allocated to the Funds to which such reductions or increases relate.

14.2. When the Sellers with respect to any one or more of the Properties have all received the whole of their Individual Sales Prices, any moneys thereafter received by the Fiscal Agent to augment the Funds, and any Vendor Receipts, as defined in subsection 11.1 hereof, shall be allocated by it among the Funds with respect to those Properties as to which all of the Sellers have not yet received the whole of their Individual Sales Prices. Such Properties are hereafter referred to as the "Remaining Properties," and, when appropriate, the "Remaining North Jersey Properties," or the "Remaining South Jersey Properties."

The allocation among the Funds with respect to the Remaining Properties (and any reallocations thereafter appropriate following the payment to all of the Sellers of the whole of their Individual Sales Prices with respect to other Properties) shall be in accordance with the following rules:

(a) Front Money Contributions paid to the Fiscal Agent pursuant to subsection 5.1 hereof and the proceeds received by the Fiscal Agent from investments pursuant to subsection 6.3 hereof, shall first be divided into two parts of 60% and 40%, respectively; the larger part shall then be allocated among the Remaining South Jersey Properties and the smaller part among the Remaining North Jersey Properties;

(b) Front Money Contributions reduced as provided in subparagraph (a) of subsection 5.3 hereof shall be allocated only among the Funds with respect to the Remaining North Jersey Properties;

(c) Front Money Contributions reduced or increased as provided in subparagraphs (b), (c) and (d) of subsection 5.3 shall be allocated to the Funds to which such reductions or increases relate;

(d) Money paid to the Fiscal Agent pursuant to the second sentence of subsection 7.2 or the second sentence of subsection 13.2 hereof shall be allocated to the Funds to which it is applicable;

(e) Vendor Receipts, as defined in subsection 11.1 hereof and money received by the Fiscal Agent pursuant to subsections 11.4 or 19.2 hereof:

(i) If resulting from the disposition of a South Jersey Property, shall be allocated among the Funds for the Remaining South Jersey Properties; and

(ii) If resulting from the disposition of a North Jersey Property, shall be allocated among the Funds for the Remaining North Jersey Properties;

(f) Money received by the Fiscal Agent pursuant to subsections 13.3 or 19.2 hereof:

(i) If received with respect to a sale or refinancing of the Indianapolis collateral prior to a transfer of Vogel's half interest therein to him pursuant to subsection 13.4 hereof, shall first be divided into two parts of 75% and 25%, respectively; the larger part shall then be allocated among the Funds for the Remaining South Jersey Properties and the smaller part among the Funds for the Remaining North Jersey Properties;

(ii) If received with respect to a sale or refinancing of the California collateral prior to a transfer of Vogel's one half interest therein to him pursuant to subsection 13.7 hereof, shall first be divided in half; one half shall then be allocated

among the Funds for the Remaining North Jersey Properties and the other half among the Funds for the Remaining South Jersey Properties;

(iii) If received with respect to a sale or refinancing of the Indianapolis collateral or of the California collateral subsequent to a transfer of Vogel's one half interest therein to him pursuant to subsection 13.4 or 13.7 hereof, whichever is applicable, shall be allocated among the Funds for the Remaining North Jersey Properties.

(iv) If received with respect to a sale of the 109 collateral, shall be allocated to the Fund for the 109 Property.

(g) Notwithstanding the provisions of subparagraph (f)(i) of this subsection 14.2, if the 109 Property is among the Remaining Properties at the time money is received by the Fiscal Agent upon a sale or other transaction with respect to the Indianapolis collateral, the first $315,000 of such money shall be allocated to the Fund for the 109 Property; any additional money received in connection with such transaction shall be allocated among the Funds for the Remaining Properties other than the 109 Property in such a fashion that, to the extent possible, 75% of such money,

including that allocated to the Fund for the 109 Property, shall be allocated among the Funds for the Remaining South Jersey Properties and the other 25% thereof shall be allocated among the Funds for the Remaining North Jersey Properties.

(h) Money reimbursed to the Fiscal Agent pursuant to section 16 shall be allocated to each Fund from which it was taken to the extent that it was taken therefrom.

(i) Money received by the Fiscal Agent with respect to the 109 collateral shall be allocated to the Fund for the 109 Property.

Allocations among the Funds for the Remaining Properties pursuant to subdivisions (a), (b), (e), (f) and (g) of this subsection or pursuant to subsection 14.3 shall be made in accordance with the principle set forth in subsection 6.1. That is to say, each such Fund shall have allocated to it the same proportion of the moneys to be allocated as the Initial Invested Capital with respect to the Property to which the Fund is applicable bears to the aggregate Initial Invested Capital for all of the Remaining Properties among which such money is to be allocated.

14.3 Notwithstanding the provisions of subsection 14.2 hereof, when the Sellers with respect to all of the

South Jersey Properties have all received the whole of their Individual Sales Prices, one-half of any Vendor Receipts then remaining in the Fund with respect to the last Remaining South Jersey Property shall be distributed by the Fiscal Agent to Vogel and the other half to Rodin, unless, at the time for such distribution, there are Remaining North Jersey Properties, in which event Rodin's half of such receipts shall be allocated among the Funds for the Remaining North Jersey Properties in accordance with the principle set forth in the last paragraph of subsection 14.2 hereof. Thereafter, when the Sellers with respect to all of the North Jersey Properties have all received the whole of their Individual Sales Prices, the Vendor Receipts then remaining in the Fund with respect to the last Remaining North Jersey Property shall be distributed by the Fiscal Agent to Rodin.

Notwithstanding the foregoing paragraph, if, when the Sellers with respect to all of the North Jersey Properties have all received the whole of their Individual Sales Prices, there are Remaining South Jersey Properties, the Vendor Receipts then in the Fund with respect to the last Remaining North Jersey Property shall continue to be held by the Fiscal Agent and shall be allocated among the Funds for the Remaining South Jersey Properties in accordance with the principles set forth in the last paragraph of subsection 14.2 hereof, but shall be segregated from the other moneys

in the Funds for the Remaining South Jersey Properties, so as to permit their identification and distribution to Rodin, which shall be made upon the receipt by the Sellers of the last Remaining South Jersey Property of the whole of their Individual Sales Prices.

If, prior to the sale of the last remaining South Jersey Property, there shall have been a sale or refinancing of the Indianapolis collateral or of the California collateral, cash proceeds after expenses shall have been received by the Fiscal Agent in connection with such a transaction, and such proceeds shall have been allocated among the Funds for the Properties in accordance with subparagraphs (c), (d), or (e) of subsection 14.1 or subparagraphs (f) and (g) of subsection 14.2 hereof, then, prior to any distribution of Vendor Receipts to Vogel or to Vogel and Rodin, whichever is applicable, pursuant to the first paragraph of this subsection, the portion of the Vendor Receipts attributable to the proceeds of such a transaction with respect to the Indianapolis or California collateral, together with any income therefrom, shall be reallocated solely to the Remaining South Jersey Property, so as to permit a distribution of one-half of such portion of the Vendor Receipts to Vogel and the other half contemporaneously to Rodin under the first paragraph of this sub-

section or subsequently to Rodin under the second paragraph of this subsection.

14.4. The Fiscal Agent shall charge against the Funds for the Properties to which they are attributable:

(a) the amounts paid by the Fiscal Agent pursuant to subsection 8.1(k) in accordance with Schedule J;

(b) The amounts by which the Front Money Contributions made pursuant to subsection 5.1(a) are reduced pursuant to subsection 5.2(i) in accordance with Schedule E; and

(c) The amounts by which the Front Money Contributions made pursuant to subsection 5.1(a) are reduced pursuant to subsection 5.2(ii) in accordance with Schedule L.

15. Duties of the Fiscal Agent; payment for its services; successor Fiscal Agents.

15.1. In addition to the duties imposed upon the Fiscal Agent by other sections of this agreement, and subject to the other sections hereof, the Fiscal Agent shall:

(a) Hold title to the Properties, to the Additional Collateral, to the 109 collateral, to any mortgages received with respect to dispositions of the Properties or sales of the Additional Collateral

or otherwise, to the joint venture interests of Vogel, Rodin and Bruce, to the Funds and the moneys therein, and to the investments made pursuant to subsection 6.3 hereof;

(b) Maintain the Funds with respect to each Property;

(c) Pay, from the Funds, to the extent available therein, all Carrying Charges with respect to the Properties and the moneys to be paid at the Closing pursuant to subparagraph (k) of subsection 8.1;

(d) Transfer title to the Properties and to the Additional Collateral, at the written direction of the Purchasers or of Rodin, as the case may be, upon notice to Dannenberg and in accordance with the provisions of section 10 hereof, and execute and deliver termination statements under the Uniform Commercial Code.

(e) Sell, pursuant to sections 18 and 19 hereof, the whole or any portion of the interests of the Purchasers, of Rodin, and of Bruce in the Properties, in the Additional Collateral, in the 109 collateral, in any mortgages held by the Fiscal Agent, in the joint ventures, and in any other assets in its custody;

(f) Refinance, at the written direction of the Purchasers or Rodin, as the case may be, upon notice to Dannenberg, (i) the mortgages referred

to in subsection 7.3 hereof and that now outstanding upon the California collateral; and (ii) the Indianapolis contract;

(g) Keep and maintain records with respect to all receipts and disbursements of moneys, transfers of title, and any other matters that it deems material to the management and disposition of the Properties, of the Additional Collateral, of the 109 collateral, and of all other assets, from time to time, in its custody;

(h) Render such reports as may reasonably be required by Dannenberg, Rodin, Vogel, NKL or Rogers & Wells with respect to all material receipts, disbursements and liabilities known to it pertinent to the Properties, to the Additional Collateral, to mortgages or to other assets in its custody;

(i) Call upon the Purchasers or Rodin, as the case may be, for any additional Carrying Charges or other moneys required to be paid by them pursuant hereto;

(j) Notify Dannenberg, Rodin, Vogel, NKL and Rogers & Wells of any defaults of which it learns in the performance of its duties under this agreement;

(k) Distribute to the Sellers, to Non-Sellers, to Vogel and to Rodin the moneys,

mortgages, Properties, Additional Collateral and other assets to which they are entitled under this agreement and the Agreement among the Remaining Venturers;

(l) Make available for inspection at its offices by Dannenberg, by Non-Sellers, by the Defendants, or by the representatives of any of them, upon reasonable notice, the records maintained by it;

(m) Employ and pay from the Funds attorneys, real estate brokers, and any other persons or institutions which it deems appropriate or needful in the performance of, arising out of, or in connection with, its duties;

(n) Upon the written request of the Purchasers or of Rodin, as the case may be, execute such releases, consents and other instruments as may be necessary or appropriate to carry out its duties under this agreement or to effect any transaction permitted by this agreement with respect to the Properties or to the Additional Collateral or the development thereof;

(o) Provide information to the Sellers' representative Bruell, Keller & Randall, at Bruell's request, concerning the performance of its duties as Fiscal Agent;

(p) Maintain appropriate insurance upon the Properties;

(q) File such tax returns or other reports to governmental agencies as may be necessary or appropriate and furnish such information to participants in the joint ventures as may reasonably be requested by them in connection with the preparation of their tax returns.

15.2. Except for its wilful malfeasance, the Fiscal Agent shall not be liable in any manner to any of the parties to this agreement.

The Defendants shall jointly and severally indemnify the Fiscal Agent against all actions, proceedings, claims or demands by any person or entity relating in any manner to this agreement, its performance, or the duties and obligations of the Fiscal Agent hereunder and against all costs, damages or expenses, including, but not limited to, attorneys' fees which the Fiscal Agent may pay or incur in consequence of any such actions, proceedings, claims, or demands, excepting only those arising from a judicial finding of wilful malfeasance by the Fiscal Agent.

15.3 In the event that Charles Hecht & Company shall resign as Fiscal Agent or shall fail, refuse or cease to act as such, a successor Fiscal Agent shall be appointed. Such successor shall be a firm of certified

public accountants practicing in the City of New York, agreeable to Dannenberg, NKL and Rogers & Wells. In the event that Dannenberg, NKL and Rogers & Wells shall fail to agree upon the selection of a successor Fiscal Agent within ten days after any of them notifies the others that the then Fiscal Agent has resigned, refused, failed or ceased to act, the court in which the Litigation is pending shall have the right to select a successor Fiscal Agent upon the application of any party to the Litigation.

15.4. The Fiscal Agent shall be paid for its out-of-pocket disbursements and for its services. The charges for its services shall be at the hourly rates it customarily charges therefor, except for services pursuant to section 19 hereof, for which it shall be paid at twice its customary hourly rates. The Fiscal Agent shall pay itself periodically from the moneys in the Funds, provided that at least twenty days prior to each such payment it shall have notified Dannenberg, NKL and Rogers & Wells of its intention so to pay itself and of the amount of such payment. Any payment made by the Fiscal Agent to itself under this subsection shall be allocated among the Funds in a manner consistent with the principles set forth in sections 6 and 14 hereof.

In the event that there are insufficient moneys in the Funds to pay the fees of the Fiscal Agent, Vogel and Rodin shall be jointly and severally liable therefor, provided, however, that, if, prior to the time of any such payment or the accrual thereof, the Sellers of interests in the joint ventures owning all of the South Jersey Properties have all received the whole of their Individual Sales Prices, as defined in subsection 4.2 hereof, then Rodin alone shall be liable therefor.

15.5. No fees or disbursements of the Fiscal Agent for services rendered to the Defendants prior to the Closing Date shall be paid from the moneys in the Funds, nor shall the fees or disbursements of any attorneys for any of the Defendants be paid from the moneys in the Funds, except that the fees and disbursements of NKL for its services as escrow agent from the date of this agreement to the Closing Date shall be paid from the moneys in the Funds.

16. Fees of the attorneys for the Sellers.

16.1. None of the defendants in the Litigation shall have any liability for the payment of the fees or disbursements of the attorneys for the Sellers. Notwithstanding the foregoing, the Fiscal Agent, shall pay to Dannenberg, at Dannenberg's written request, from

the moneys in the Funds, an aggregate of not more than $75,000 as a loan to the Sellers on account of the fees and disbursements of their attorneys, provided, however, that, of such amount, not more than $25,000 shall be paid to Dannenberg until a date no less than three months after the Closing, not more than an additional $25,000 shall be paid to Dannenberg until a date no less than six months after the Closing, and not more than an additional $25,000 shall be paid to Dannenberg until a date no less than one year after the Closing.

The Fiscal Agent shall give notice to NKL and to Rogers & Wells of any payments to Dannenberg pursuant to this section.

16.2. From and after the Effective Date, the aggregate payments authorized to be made to Dannenberg by the Fiscal Agent pursuant to the preceding subsection shall constitute a debt owing from each of the Sellers to the Purchasers in an amount proportional to each such Seller's initial cash contribution with respect to each joint venture in which he is a participant, as set forth in Schedule C hereto. Such debt shall be repaid by each Seller to the Fiscal Agent upon its request at the earlier of (i) the date when, in the sole judgment of the Fiscal Agent, the moneys represented by such debt are needed

for the payment of Carrying Charges, or (ii) the date when each such Seller is to receive any part of his Individual Sales Price, either pursuant to a distribution under section 11, a payment at the South Jersey or North Jersey settlement date, or otherwise. In the event and to the extent that such debt is not repaid to the Fiscal Agent in accordance with this paragraph, it shall be deducted from the Individual Sales Price payable to each such Seller.

Any payments made by, or repayments received by, the Fiscal Agent pursuant to this section shall be allocated among the Funds in accordance with subsection 14.1(e) hereof.

17. Events of default; curing defaults.

17.1. The following shall constitute events of default hereunder:

(a) The failure to make timely payment to the Fiscal Agent of the Front Money Contributions required to be paid under section 5 hereof;

(b) The failure to make timely payment to the Fiscal Agent of money requested by the Fiscal Agent pursuant to subsection 7.2 hereof;

(c) The failure of the Purchasers to cause the delivery of the money and instruments required to be delivered at the Closing under subparagraphs

(a), (b), (c), (d), (f), (g), (m), (n), (o) and (p) of subsection 8.1 hereof;

(d) A substantial breach of any of the representations and warranties of subsection 9.1 hereof;

(e) A substantial breach of any of the covenants of subsection 9.4 hereof;

(f) The sale of a Property by the Purchasers or by Rodin, as the case may be, in violation of the limitations in subsection 10.1 hereof;

(g) The failure to pay to all of the Sellers with respect to the South Jersey Properties their Individual Sales Prices on or before the South Jersey settlement date;

(h) The failure to pay to all of the Sellers with respect to the North Jersey Properties their Individual Sales Prices on or before the North Jersey settlement date;

(i) The failure to make timely payment of the Carrying Charges required to be paid pursuant to subsection 13.2 hereof or the failure promptly to reimburse the Funds, should the Fiscal Agent make such a payment out of the Funds;

(j) A sale or refinancing with respect to the Additional Collateral in violation of subsection 13.3 hereof; and

(k) Suffering a foreclosure proceeding to be maintained to final judgment of foreclosure with respect to any of the Properties or any of the Additional Collateral or defaulting in timely payments of the moneys remaining due under the Indianapolis contract.

17.2. Upon the happening of an event of default, any one or more of the Sellers who have not theretofore received the whole of their Individual Sales Prices may give written notice thereof to the Defendants. Unless the Defendants shall cure such default within ten days after the mailing of notice thereof, the Sellers, or any one or more of them, shall have the right to invoke the remedies provided in section 18 hereof. Notwithstanding the foregoing provisions of this subsection, upon the happening of an event of default under subparagraphs (a), (g) or (h) of subsection 17.1, any one or more of the Sellers who have not theretofore received the whole of their Individual Sales Prices, may invoke the remedies provided in section 18 hereof without giving prior notice of default under this subsection.

17.3. In lieu of invoking the remedies provided for in section 18 hereof, the Sellers, or any one or

more of them, may themselves cure a default, in which event, the Purchasers, with respect to the South Jersey Properties, and Rodin, with respect to the North Jersey Properties, shall be immediately liable to the Sellers effecting such cure for the moneys paid and the costs incurred in connection therewith.

17.4. The waiver by the Sellers of any event of default shall not be deemed a waiver of any subsequent default, whether or not of the same character.

18. The right to enter judgment against the Defendants and the Corporations.

18.1. In the event that a default, other than a default under subparagraphs (a), (g) or (h) of subsection 17.1 hereof, shall have occurred and shall remain uncured for more than ten days after notice thereof is mailed in accordance with subsection 17.2 hereof, any one or more of the Sellers who have not theretofore received the whole of their Individual Sales Prices may apply in the Litigation for the entry of a judgment against the Defendants and the Corporations in conformity with this section. Such application shall be upon reasonable notice to the Defendants and to the attorneys of record for each of them in the Litigation.

In the event that a default under subparagraphs (a), (g) or (h) of subsection 17.1 hereof shall be occurr-

ing, any one or more of the Sellers who have not theretofore received the whole of their Individual Sales Prices may apply in the Litigation for the entry of a judgment in conformity with this section. Such application shall be upon not less than three business days' notice to the Defendants and to the attorneys of record for each of them in the Litigation.

In opposing an application for the entry of a judgment by reason of a default under subparagraphs (b), (d), (e), (f), (i) or (j) or subsection 17.1, the Defendants shall have the burden of showing that:

(a) No default of which notice was given, in fact, occurred; or

(b) Any default of which notice was given has been cured; or

(c) Any default of which notice was given has not materially jeopardized the rights of the Sellers under this agreement; or

(d) The Sellers have all been paid the whole of their Individual Sales Prices; or

(e) The Sellers have all released all of the Defendants from their obligations under this agreement.

In opposing an application for the entry of a judgment by reason of a default under subparagraphs (a), (c), (g), (h) or (k) of subsection 17.1, the Defendants shall have the right to assert any of the foregoing affirmative defenses, other than that set forth in subparagraph (c) of the preceding paragraph of this subsection.

18.2. Unless the court shall find that one or more of the defenses set forth in subsection 18.1 hereof has been established, it shall enter judgment in favor of each Seller, including each Additional Seller who shall have intervened in the Litigation (to which intervention the Defendants shall consent), as follows:

(a) Against Vogel and Boklan and in favor of each Seller of an interest in a South Jersey Property who has not been paid the whole of his Individual Sales Price, for an amount equal to the whole of his Individual Sales Price, or so much thereof as then remains unpaid, whichever is less;

(b) Against Rodin and in favor of each Seller of an interest in any Property who has not been paid the whole of his Individual Sales Price, for an amount equal to the whole of his Individual Sales Price, or so much thereof as then remains unpaid, whichever is less;

(c) Except as provided in subsection 18.2(d), against Bruce and in favor of:

(i) Each Seller of an interest in any North Jersey Property who has not been paid the whole of his Individual Sales Price, for an amount equal to 24% of so much of his Individual Sales Price as then remains unpaid; and

(ii) Mortimer Ehrman, William Ehrman, Samuel Ehrman, Richard Ehrman, Robert Wolfe and David Herschberg, if they have not theretofore been paid the whole of their Individual Sales Prices with respect to their interests in the 150 Property, for so much of such Individual Sales Prices as then remain unpaid;

(d) In the event that such judgment is predicated in whole or in part upon an event of default under subsection 17.1(a), against Bruce and in favor of each Seller of an interest in any Property who has not been paid the whole of his Individual Sales Price, for an amount equal to the whole of his Individual Sales Price, or so much thereof as then remains unpaid, whichever is less; and

(e) Against each of the Corporations and in favor of each Seller of an interest in a Property who has not been paid the whole of his Individual Sales Price, for an amount equal to the whole of

his Individual Sales Price, or so much thereof as then remains unpaid, whichever is less, provided, however, that the judgment against each Corporation shall only be with respect to those Sellers who owned interests in a Property of which such Corporation was (i) a contract vendee, (ii) a contract vendor, (iii) an owner, (iv) a mortgagee, or (v) an owner or assignor of a mortgage set forth on Schedule G hereto.

(f) Prior to its entry there shall be deducted from the amount of any judgment the amounts, if any, provided in subsection 11.2 hereof.

18.3. Any judgment entered pursuant to subsection 18.2 hereof (i) shall be a joint and several judgment as to those against whom it is entered; (ii) shall bear interest, prior to the date of judgment, only to the extent provided for in subsection 4.2 hereof; (iii) shall bear interest, subsequent to the date of judgment, to the extent provided by law; (iv) may, in the discretion of the court, include taxable costs in accordance with law; and (v) may, in the discretion of the court, include an award to the Sellers for their attorneys' fees incurred in obtaining such judgment, if the court shall find that

Defendants' opposition to the entry of judgment was frivolous or interposed solely for purposes of delay.

18.4. Notwithstanding the provisions of subsection 18.2 hereof, upon the entry of a judgment in favor of one or more Sellers and against one or more of the Defendants or of the Corporations, or of both, the court shall dismiss the Litigation , with prejudice, as to all of the Defendants and of the Corporations, except those against whom the court finds that such Sellers are entitled to judgment by reason of their failure to establish one or more of the defenses set forth in subsection 18.1 and those as to whom the Litigation has theretofore been dismissed with prejudice pursuant to subsection 20.3 hereof.

18.5. Notwithstanding the foregoing provisions of this section, if the court, upon an application by any one or more of the Sellers for a judgment pursuant to subsection 18.1, finds that a defense set forth in subparagraphs (a), (b) and (c) of such subsection has been established, but that all of the Sellers have neither been paid the whole of their Individual Sales Prices, nor have they released all of the Defendants from their obligations under this agreement, it may enter an order in favor of the Defendants denying the relief requested

by the Sellers, but without dismissal of the Litigation, except as to those Sellers whom it finds have been paid the whole of their Individual Sales Prices or have released the Defendants from their obligations under this agreement, and, in its discretion, may include in such order an award to the Defendants of their attorneys' fees incurred in defense against such application, if it finds that such application was without substantial basis or was interposed for purposes of harassment.

19. Collection upon a judgment.

19.1 Any judgment for the Sellers entered pursuant to section 18 may be satisfied, in whole or in part, either pursuant to the remedial provisions of subsection 19.2 or in accordance with the remedies provided by law for the satisfaction of judgments, or both, provided, however, that no Seller shall, through the utilization of the procedures provided by law for the satisfaction of judgments, obtain a priority with respect to any assets of Vogel or of Rodin that are security for their obligations hereunder that affords him rights, relative to other Sellers who are judgment creditors, more favorable than those afforded by this agreement.

19.2 Upon the entry of a judgment in the Litigation in favor of the Sellers, or any of them, pursuant to sec-

tion 18 hereof, any Seller may deliver to the Fiscal Agent a certified copy of such judgment.

Upon receipt thereof, the Fiscal Agent shall pay to each Seller who is a judgment creditor so much of the judgment in his favor as can be paid from the moneys in the Fund with respect to the Property in which such Seller was the owner of an interest, less the amount of any then billed or accrued but unpaid fees and expenses of the Fiscal Agent. If the moneys in such Fund are insufficient to pay the entirety of the Sellers' judgments with respect to that property, such Sellers shall be paid pro rata in accordance with the amounts of their judgments. In determining the sufficiency of the moneys in the Fund with respect to each Property, the allocation principles set forth in sections 6 and 14 hereof shall be applicable.

If the moneys in the Fund with respect to any Property are insufficient to pay the entirety of the Sellers' judgments with respect to such Property, the Fiscal Agent shall, if so directed in writing by Dannenberg, commence the sale, in accordance with the provisions of the succeeding paragraphs of this subsection, of the interests of the Purchasers, of Vogel, of Rodin, or of Bruce, as the case may be,

to the extent that it then has title thereto as security and subject to the rights of Non-Sellers, (a) in such Property (or in any other Property with respect to which all of the Sellers have been paid the entirety of their Individual Sales Prices or judgments, as the case may be), (b) in any mortgage theretofore received upon a disposition of such Property pursuant to sections 10 and 11 hereof (or in any mortgages received upon a disposition of any other Property with respect to which all of the Sellers have been paid the whole of their Individual Sales Prices or judgments, as the case may be), (c) in the Additional Collateral or in any mortgages received with respect thereto upon a sale pursuant to subsection 13.3 hereof, or (d) in the 109 collateral.

Such sales shall be conducted by the Fiscal Agent in accordance with the written directions of Dannenberg within a reasonable time after its receipt of a certified copy of the judgment but in any event within the time provided in subsection 19.4 hereof. Such sales shall be governed by the procedures applicable to the collection of judgments through the sale of judgment debtors' assets in the jurisdiction in which the property being sold

is located. In effecting such sales, the Fiscal Agent, to the extent lawful, (i) may act in lieu of a sheriff or like governmental officer; (ii) may act without the entry of a judgment in the jurisdiction in which the Property is located; (iii) may proceed through a public or private sale; (iv) may sell, for cash or credit, or any combination thereof; (v) may proceed without advertising or publication of notice; (vi) shall act only upon not less than five days' written notice to the Defendants and to their attorneys of record in the Litigation; (vii) shall act only upon notice to the Non-Sellers; (viii) may sell, free of any right of redemption by the Defendants, to any person, including a Seller or a Defendant; (ix) may sell with or without the solicitation of competing offers; (x) may sell to the offeror offering the largest amount of cash, the largest overall price, taking account of both cash and mortgages, or the most advantageous terms upon a mortgage or mortgages with respect to interest rate, amortization schedule, and other factors; and (xi) in general, may act in effecting sales in accordance with its own best judgment and discretion, subject, however, to the written directions of Dannenberg.

Among other things, Dannenberg may direct the Fiscal Agent to sell all or less than all of the Defendants'

interests in the Properties, in the Additional Collateral, in the 109 collateral, and in the mortgages then held by it as security and to sell such assets separately or in one or more groups.

The proceeds, after expenses (including attorneys' fees and the billed or accrued but unpaid fees and expenses of the Fiscal Agent), and after Distributions to Non-Sellers, of any such sale of a Property or of a mortgage theretofore received with respect to a disposition thereof pursuant to sections 10 and 11 shall augment the Fund for such Property and, when the judgments of all of the Sellers with respect to such Property shall have been satisfied, or when the Sellers with respect to such Property have all received the whole of their Individual Sales Prices, shall be reallocated among the Funds with respect to the other Properties in accordance with the principles set forth in sections 6 and 14 hereof. The proceeds, after expenses, of any such sale of the Additional Collateral, of the 109 collateral, or of any mortgage theretofore received with respect to a sale of the Additional Collateral pursuant to subsection 13.3 shall be divided and allocated, in accordance with subsections 14.1 and 14.2, among the Funds with respect to the Properties

as to which all of the Sellers have not received the whole of their Individual Sales Prices or have not had satisfaction of the whole of their judgments.

19.3. Notwithstanding the provisions of subsections 19.1 and 19.2 hereof, no Seller having a judgment against Bruce shall obtain execution against his assets, other than his interests in the Properties, until such Seller shall have sought execution with respect to such judgment against the other Defendants liable thereon and such execution shall have been returned unsatisfied, nor shall any such Seller initiate supplementary proceedings against Bruce to determine the nature or location of any of his assets, until such supplementary proceedings have been conducted against those other Defendants who are judgment debtors of such Seller and who are amenable and responsive to a subpoena issued by the District Court for the Eastern District of New York in such a proceeding.

19.4. Notwithstanding the provisions of subsection 19.2, no Seller having a judgment against any of the Defendants pursuant to section 18 hereof shall have the right to realize upon such judgment from the assets held by the Fiscal Agent, unless the sale of such assets or proceedings incident thereto shall have

been initiated within one year from the date that judgment is entered. Any assets held by the Fiscal Agent with respect to which (i) no sale has been effected or (ii) no proceedings incident thereto have been initiated within one year from the date of such judgment shall, at the expiration of such year, be delivered by the Fiscal Agent to such of the Defendants as are entitled thereto by deed, assignment, or other appropriate instrument.

19.5. Notwithstanding the foregoing provisions of this section, no Seller having a judgment against any of the Corporations, shall obtain satisfaction of such judgment except (i) from assets beneficially owned by such Corporation at the time of execution of judgment or (ii) from assets theretofore beneficially owned by such Corporation and transferred by it to any of the Defendants or to any member of their families or to any entity controlled by them for a consideration less than the fair value thereof.

19.6. Except to the extent provided in subsection 19.5, nothing in this section shall prevent any Seller having a judgment against any of the Defendants from seeking to set aside any transfer of assets by any of the Defendants that such Seller alleges is a transfer in fraud of such Defendant's creditors.

20. Suspension of prosecution of the Litigation; its discontinuance.

20.1 Except as provided in subsection 8.1(i) hereof and subsection 4.2 of the Agreement among the Remaining Venturers and except as the court shall otherwise order, the Litigation shall not be terminated until the earlier of the payment to all of the Sellers of the whole of their Individual Sales Prices or the entry of a judgment for the Sellers pursuant to section 18. Notwithstanding the foregoing and except to the extent otherwise provided in subsection 17.2 with respect to defaults under subparagraphs (a), (g) and (h) of subsection 17.1, unless an event of default, as defined in subsection 17.1, is occurring and is uncured for more than ten days after notice, in accordance with subsection 17.2, the Litigation shall not be further prosecuted, except in accordance with section 18, (i) by any Seller after the Effective Date or (ii) by any Additional Seller who thereafter becomes a party hereto after he joins herein.

20.2 After the Effective Date no party hereto shall commence or prosecute any other suit alleging the same or similar claims to those asserted in the Litigation.

20.3 Notwithstanding subsection 20.1:

(a) Upon the payment to all of the Sellers owning interests in all of the South Jersey Proper-

ties of the whole of their Individual Sales Prices, such Sellers, as well as the Sellers of interests in North Jersey Properties, shall dismiss the Litigation, with prejudice, as against Vogel, Boklan, Parkham Development Corp., Group Administrators Corp., Byerly Properties, Inc., Cole-Hunt Development Corp., Tamerlane Properties, Inc., Hartwick Properties, Inc., and Bervo Associates, Inc.; and

(b) Upon the payment to all of the Sellers owning interests in all of the Properties of the whole of their Individual Sales Prices, the Sellers shall dismiss the Litigation, with prejudice, as against Rodin, Bruce, and the Corporations as to which dismissals have not theretofore been granted.

21. The withdrawal by Sellers from the joint ventures; indemnification of Sellers.

21.1. Each Seller who shall, by the Effective Date, execute this agreement shall have no rights or obligations with respect to the joint ventures in which he participated or the Properties owned by such joint ventures subsequent to the Effective Date, except as provided herein.

Each Additional Seller who shall, subsequent to the Effective Date, join in this agreement pursuant

to section 3 shall have no rights or obligations with respect to the joint ventures in which he participated or the Properties owned by such joint ventures subsequent to the date that he becomes a party hereto, except as provided herein.

21.2. Except to the extent that a debt or charge arises out of the obligations created by this agreement, the Purchasers shall indemnify each Seller for any debt or charge for which, at the instance of any Non-Seller, he is held liable subsequent to the date that he executes this agreement and by reason of his status as a joint venturer prior thereto.

22. The resolution of disputes.

22.1. Except as provided in sections 17 and 18 with respect to events of default, any dispute arising under this agreement, either between one or more Sellers and one or more defendants in the Litigation, or among two or more Sellers or among two or more defendants in the Litigation, inter se, or between the Fiscal Agent and any other party to this agreement, including disputes relating to the interpretation, application, or enforceability of any provision hereof, shall be submitted by any party hereto to the judge to whom the Litigation is assigned. The judge may, in his discretion, decide

such dispute himself or refer such dispute to any one of the magistrates in the District Court for the Eastern District of New York. The judge or the magistrate, as the case may be, shall determine such dispute in plenary or summary fashion, after hearing testimony or receiving written submissions, as he deems appropriate. The decision of the judge or of the magistrate, as the case may be, may be embodied in a decision or order. Such decision or order, whether made by the judge or by the magistrate, shall be final and unreviewable by appeal or otherwise.

The parties hereto consent that any dispute submitted pursuant to this section may be referred by the court to a magistrate for final determination, notwithstanding the limitations on a magistrate's authority otherwise applicable by law.

22.2. Upon the entry of a decision or order pursuant to this section, any party hereto may deliver a copy thereof to any other party, including the Fiscal Agent. Upon receipt thereof, such other party, including the Fiscal Agent, shall perform such acts as the decision or order may require of it, or as may be necessary or appropriate to its implementation.

22.3. A decision or order rendered under subsection 22.1 shall be enforceable in the manner applicable to orders of the court.

23. Effect of bankruptcy.

23.1 Until the Defendants shall have made all of the Front Money Contributions required to be made under section 5 hereof:

(a) The obligations of Vogel, Rodin and Boklan under this agreement, including the obligations under any judgment that may be entered pursuant to section 18 hereof, shall not constitute dischargeable debts under section 17a of the Bankruptcy Act; and

(b) The obligations of Bruce under this agreement, including the obligations under any judgment that may be entered pursuant to section 18 hereof, shall not constitute dischargeable debts under section 17a of the Bankruptcy Act, if such debts arise from a failure by Rodin to pay the share of the Front Money Contributions to be paid by him, as specified in a letter dated July , 1975 from NKL to Lipper, Lowey & Dannenberg.

23.2 Except as provided in the preceding subsection, nothing in this agreement or in any release or other instrument delivered pursuant hereto shall prejudice the right of any Seller to maintain that the obligations of the Defendants, including the obligations under any judgment that may be entered pursuant to section 18 hereof, do not constitute dischargeable debts under section 17a of the Bankruptcy Act or the right of any Defendant to maintain to the contrary.

PURCHASE AGREEMENT

24. Miscellaneous.

24.1 Except as otherwise specifically provided in section 19, this agreement is to be governed by the internal law of New York.

24.2. Any notice to be given under this agreement shall be by certified mail, return receipt requested, except for notices given by the Fiscal Agent in the routine performance of its duties, which may be given by regular mail. Until notice is given of a change of address, such notices shall be given as follows:

To Rodin, NKL and the Corporations:

c/o Geoffrey M. Kalmus
Nickerson, Kramer, Lowenstein, Nessen,
Kamin & Soll
919 Third Avenue
New York, New York 10022

To Vogel, Boklan, Rogers & Wells, and the Corporations:

c/o Robert Larsen, Esq.
Rogers & Wells
200 Park Avenue
New York, New York

To Bruce:

c/o Jeffrey D. Stark, Esq.
Fink Weinberger Fredman & Charney
551 Fifth Avenue
New York, New York 10017

To the Sellers and to Dannenberg:

c/o Richard Dannenberg, Esq.
Lipper, Lowey & Dannenberg
747 Third Avenue
New York, New York

and

c/o Bernard Kanton, Esq.
310 Madison Avenue
New York, New York

PURCHASE AGREEMENT

To the Fiscal Agent:

Mr. Richard Hecht
Charles Hecht & Company
595 Madison Avenue
New York, New York 10022

24.3. This agreement constitutes the entire agreement between the Sellers, on the one hand, and the other parties hereto, on the other. It supercedes the joint venture agreements to which the Sellers and certain of the Defendants in the Litigation have heretofore been parties. This agreement may not be modified except by a writing signed by the parties affected by such modification or, with respect to those parties hereto who are parties to the Litigation, their attorneys of record in the Litigation.

24.4. This agreement may be signed in one or more counterparts; it shall be binding upon the parties hereto notwithstanding the fact that all of them have not executed the same counterpart.

24.5. The rights and obligations of the parties hereunder shall survive their deaths and shall be binding upon their estates and successors in interest.

24.6. Any Seller may assign his rights under this agreement only to another Seller, to a Non-Seller, or to any one or more of the Defendants.

24.7. The parties hereto shall execute such further instruments as may be necessary or appropriate to give effect to the provisions of this agreement.

24.8. Each of the Sellers, by his execution of this agreement, appoints Richard Dannenberg and Bernard Kanton, or either of them acting alone, his attorney-in-fact with respect to the execution of any instruments required to be executed by the Sellers in connection with the performance or implementation of this agreement, other than this agreement itself and the releases to be given by the Sellers hereunder, and authorizes Messrs. Dannenberg and Kanton, or either of them, to execute on his behalf such instruments as they deem necessary or appropriate to give effect to the provisions hereof.

24.9. Whenever reference is made in this agreement to Dannenberg, NKL, or Rogers and Wells, such reference

shall include, also, any substitute counsel in the Litigation.

Eugene Rodin

Seymour Vogel and
Sy Vogel Associates

Bruce Rodin

Kenneth Boklan

Mendon Properties, Inc.

By _____
Pres

Parkham Development Corp.

By _____
Pres

Rillstone Properties, Inc.

By _____
Pres

Godsberg Realty Corp.

By _____
Pres

Byerly Properties, Inc.

By _____
Pres

Group Administrators Corp.

By _____
Pres

Tamerlane Properties, Inc.

By _____
Pres

Hartwick Properties, Inc.

By _____
Pres

PURCHASE AGREEMENT

Cole-Hunt Development Corp.

By _____
Pres.

_____
Karl M. Neimand

_____
Arthur A. Ingram

_____
Morris Gudwin

_____
George Cooper

_____
Dorothy Levess

_____
Mortimer Ehrman

_____
Samuel Ehrman

_____
Jack Orloff

_____
Melvin Hirschberg

_____
George Schwartz

_____
Eugene Cohn

_____
Margaret Cohn

Servo Associates, Inc.

By _____
Pres.

_____
Sydney Jarkow

_____
Sidney Mishcon

_____
Edward A. Pallack

_____
Leonard Milton

_____
Bernard S. Kanton

_____
William Ehrman

_____
Richard Ehrman

_____
Alexander Davis

_____
David Herschberg

_____
Matthew Stein

_____
Mae Cohn

_____
Abraham Goldfarb

PURCHASE AGREEMENT

Van Baalen Heilbrun & Co., Inc.
Employees Profit Sharing Plan
and Trust

By_____

_____
Robert Wolfe

_____
Benjamin Jagendorf

_____
Ralph Maxon

_____
Ethel Reibstein

_____
Lester Mishcon

Additional Sellers should sign immediately below

_____ _____

_____ _____

_____ _____

Charles Hecht & Company
(as to sections 2, 5-8, 11
13-16, 19, 22 and 24 only)

By_____

Nickerson, Kramer, Lowenstein,
Nessen, Kamin & Soll
(as to sections 2, 3, 5 and
8 only)

By_____

PURCHASE AGREEMENT

Schedule A

South Jersey Properties

| Description of Property | Joint venture agreement date | Joint venturers | Percentage interest in the venture |
|---|---|---|---|
| Approximately 109 acres in Winslow Township, New Jersey | undated | Morris Belitz | .033784 |
| | | Alexander Davis | .040541 |
| | | Harris H. Groten | .027026 |
| | | Gertrude Hines Groten | .067568 |
| | | Morris Gudwin | .040541 |
| | | Arthur Ingram | .067568 |
| | | Bernard S. Kanton | .202703 |
| | | Sydney Jarkow | .067568 |
| | | Leonard Milton | .067568 |
| | | Richard Moodnik | .027026 |
| | | George Schwartz | .067568 |
| | | Herman Tietz | .054054 |
| | | Gladys F. Tietz | .081081 |
| | | Seymour Vogel | .077702 |
| | | Eugene Rodin | .077702 |
| Approximately 150 acres in Winslow Township, New Jersey | 6/12/71 | George Cooper | .0621414 |
| | | Mortimer Ehrman | .0414276 |
| | | Richard K. Ehrman | .0207138 |
| | | Samuel Ehrman | .0207138 |
| | | William Ehrman | .0207138 |
| | | Eva Glass | .0621414 |
| | | Brian Goldin | .0621414 |
| | | Flora W. Goldin | .0828552 |
| | | James Grad | .0621414 |
| | | Gertrude Hines Groten | .0621414 |
| | | Morris H. Gudwin | .1035690 |
| | | David Herschberg | .0103569 |
| | | Seymour Meyer | .0414276 |
| | | Rose Orloff | .1035690 |
| | | Van Baalen Heilbrun & Co., Inc. | .0497132 |
| | | Robert Wolfe | .0103569 |
| | | Eugene Rodin | .0919381 |
| | | Seymour Vogel | .0919381 |

PURCHASE AGREEMENT

Schedule A (page 2)

South Jersey Properties

| Description of Property | Joint venture agreement date | Joint venturers | Percentage interest in the venture |
|---|---|---|---|
| Approximately 220 acres in Winslow Township, New Jersey | only 1971 | Melvin Hirschberg | .0476190 |
| | | Bernard S. Kanton | .1785714 |
| | | Sidney Mishcon | .0587857 |
| | | Karl Neimand | .2380952 |
| | | Andrew Pallack | .0714286 |
| | | Matthew Stein | .0476190 |
| | | Ethel Reibstein | .0587857 |
| | | Lester Mishcon | .0587857 |
| | | Benjamin Jagendorf | .0440951 |
| | | Ralph Maxon | .0176430 |
| | | Seymour Vogel | .0892857 |
| | | Eugene Rodin | .0892857 |

North Jersey Properties

| | | | |
|---|---|---|---|
| Approximately 102 acres in Hope Township, Jersey | 1/31/72 | Abe Goldfarb | .1351351 |
| | | Melvin Hirschberg | .1297297 |
| | | Seymour Meyer | .0540541 |
| | | Karl Neiman | .1351351 |
| | | Edward A. Pallack | .1945946 |
| | | Catherine M. Vanderwaag | .081081 |
| | | Delores T. Virdone | .1351352 |
| | | Bruce Rodin | .0675676 |
| | | Eugene Rodin | .0675676 |
| Approximately 158 acres in Hope Township, New Jersey | 3/22/72 | George Cooper | .1706484 |
| | | Harris Groten | .1706484 |
| | | Arthur Ingram | .2133105 |
| | | Seymour Meyer | .0853242 |
| | | Karl Neimand | .0853242 |
| | | Harris Turkel | .0614334 |
| | | Bruce Rodin | .10665525 |
| | | Eugene Rodin | .10665525 |

PURCHASE AGREEMENT

Schedule A (page 3)

North Jersey Properties

| Description of Property | Joint venture agreement date | Joint venturers | Percentage interest in the venture |
|---|---|---|---|
| Approximately 196 acres in Allamuchy Township, New Jersey | only June, 1963 | Eugene Cohn | .0584 |
| | | Mae Cohn | .0585 |
| | | Margaret Cohn | .0585 |
| | | Arthur Ingram | .1097 |
| | | Seymour Meyer | .1316 |
| | | Karl Neimand | .3947 |
| | | Bruce Rodin | .0943 |
| | | Eugene Rodin | .0943 |
| Approximately 231 acres in Warren County, New Jersey | 9/20/72 | George Cooper | .111111 |
| | | Richard Ehrman | .051852 |
| | | Sandy Ehrman | .044444 |
| | | William Ehrman | .051852 |
| | | Dorothy Levess | .185185 |
| | | Adele Margulies | .092593 |
| | | Bernard Margulies | .092593 |
| | | Karl Neimand | .185185 |
| | | Bruce Rodin | .092[illegible]5925 |
| | | Eugene Rodin | .092[illegible]925 |
| Approximately 250 acres in Independence Township, New Jersey | 10/31/72 | Eugene Cohn | .0546 |
| | | George Cooper | .0984 |
| | | Arthur Ingram | .0820 |
| | | Karl Neimand | .3934 |
| | | Edward Pallack | .0984 |
| | | Mae Cohn | .0546 |
| | | Margaret Cohn | .0546 |
| | | Bruce Rodin | .0820 |
| | | Eugene Rodin | .0820 |

PURCHASE AGREEMENT

**Schedule B**

**Description of the Additional Collateral**

1. Property located in the County of Riverside, State of California

All that portion of the Southeast quarter of Section 1, Township 5 South, Range 6 East, San Bernardino Base and Meridian, lying Southwesterly of the Southern Pacific Railroad Company's right of way;

EXCEPTING therefrom the Southerly 44 feet thereof as conveyed to the County of Riverside by Deed recorded March 31, 1958 in Book 2246 page 515 of Official Records of Riverside County, California;

ALSO EXCEPTING therefrom that portion lying within Washington Street.

2. Property located in Indianaopolis, Indiana

The Southeast quarter and part of the Northeast quarter of Section 11, Township 16 North, Range 2 East, Marion County, Indiana, being more particularly described as follows:

Beginning at the Southwest corner of the aforementioned Southeast Quarter; running thence N 00 degrees 21' 10" E upon and along the West line of said quarter section a distance of 2662.614 feet to the Northwest corner of said Southeast quarter and the Southwest corner of the aforementioned Northeast quarter section; running thence N 00 degrees 21' 21" E upon and along the West line of said Northeast quarter a distance of 667.300 feet to a point; running thence N 89 degrees 58' 58" E parallel with the South line of said Northeast quarter section a distance of 1076.571 feet to a point on the West right of way of I-465; running thence S 00 degrees 28' 29" W (this and the next two calls being upon and along the right of way line of I-465) a distance of 3227.552 feet to a point; running thence S 89 degrees 43' 19" W a distance of 200.884 feet to a point; running thence S 81 degrees 08' 16" W a distance of 546.239 feet to a point; running thence S 00 degrees 04' 19" E a distance of 17.193 feet to a point in the South line of the aforementioned Southeast quarter section; thence S 89 degrees 55' 41" W upon and along said South line a distance of 329.791 feet to the place of beginning; containing 80.819 acres, more or less, and subject to all legal highways, rights of ways and easements.

## Schedule C

## 109 Property

| Participants | (a) Initial Cash Contribution | (b) Date from which Interest Commences on (a) | (c) Carrying Charges Paid Through 12/31/74 | (d) Date from which Interest Commences on (c) | (e) Qualifying Payments |
|---|---|---|---|---|---|
| Bernard Kanton | $ 75,000 | 6/15/71 | $ 36,853.72 | 5/15/75 | $7,091.51 |
| George Schwartz | 25,000 | 6/15/71 | 14,238.63 | 5/15/73 | 493.05 |
| Herman Tietz | 20,000 | 6/15/71 | 11,758.26 | 5/15/73 | - |
| Sydney Jarkow | 25,000 | 6/15/71 | 13,246.90 | 5/15/73 | 723.42 |
| Morris Gudwin | 15,000 | 6/15/71 | 7,688.38 | 5/15/73 | 1,113.15 |
| Morris Belitz | 12,500 | 6/15/71 | 7,363.08 | 5/15/73 | - |
| Gladys F. Tietz | 30,000 | 6/15/71 | 17,677.82 | 5/15/73 | - |
| Alexander Davis | 15,000 | 6/15/71 | 8,239.78 | 5/15/73 | 594.35 |
| Harris H. Groten | 10,000 | 6/15/71 | 5,894.27 | 5/15/73 | - |
| Gertrude Hines Groten | 25,000 | 6/15/71 | 14,731.67 | 5/15/73 | - |
| Arthur Ingram | 25,000 | 6/15/71 | 13,575.18 | 5/15/73 | 1,156.49 |
| Leonard Milton | 25,000 | 6/15/71 | 13,575.18 | 5/15/73 | 1,156.49 |
| Richard Moodnik | 10,000 | 6/15/71 | 5,932.87 | 5/15/73 | - |
| | $312,500 | | $170,802.84 | | |

## Schedule C

## 150 Property

| Participants | (a) Initial Cash Contribution | (b) Date from which Interest Commences on (a) | (c) Carrying Charges Paid Through 12/31/74 | (d) Date from which Interest Commences on (c) | (e) Qualifying Payments |
|---|---|---|---|---|---|
| Eva Glass | $ 15,000 | 3/1/71 | $ 14,696.46 | 6/30/73 | $2,905.79 |
| Rose Orloff | 25,000 | 3/1/71 | 24,494.23 | 6/30/73 | 4,842.98 |
| George Cooper | 15,000 | 3/1/71 | 14,696.54 | 6/30/73 | 2,905.79 |
| Gertrude H. Groten | 15,000 | 3/1/71 | 17,602.23 | 6/30/73 | - |
| Van Baalen Heilbrun & Co., Inc. Profit Sharing Plan | 12,000 | 3/1/71 | 11,757.30 | 6/30/73 | 2,324.63 |
| Flora Goldin | 20,000 | 3/1/71 | 19,592.19 | 6/30/73 | 3,874.38 |
| Brian Goldin | 15,000 | 3/1/71 | 14,696.54 | 6/30/73 | 2,905.79 |
| Seymour Meyer | 10,000 | 3/1/71 | 11,734.88 | 6/30/73 | - |
| James Grad | 15,000 | 3/1/71 | 17,602.32 | 6/30/73 | - |
| David Herschberg* | 5,000 | 3/1/71 | 5,341.79 | 6/30/73 | 525.66 |
| Morris H. Gudwin | 25,000 | 3/1/71 | 20,428.06 | 6/30/73 | 8,909.15 |

* Includes the interest of Robert Wolfe, as assignee. All amounts payable to such assignee shall be paid to David Herschberg.

## Schedule C

## 150 Property

| Participants | (a) Initial Cash Contribution | (b) Date from which Interest Commences on (a) | (c) Carrying Charges Paid Through 12/31/74 | (d) Date from which Interest Commences on (c) | (e) Qualifying Payments |
|---|---|---|---|---|---|
| Mortimer Ehrman | 10,000 | 3/1/71 | 10,808.16 | 6/30/73 | 793.42 |
| William Ehrman | 5,000 | 3/1/71 | 5,501.92 | 6/30/73 | 365.64 |
| Samuel Ehrman | 5,000 | 3/1/71 | 5,867.56 | 6/30/73 | - |
| Richard Ehrman | 5,000 | 3/1/71 | 4,898.96 | 6/30/73 | 968.60 |
| | $197,000 | | $199,719.24 | | |

220 Property

| Participants | (a) Initial Cash Contribution | (b) Date from which Interest Commences on (a) | (c) Carrying Charges Paid Through 12/31/74 | (d) Date from which Interest Commences on (c) | (e) Qualifying Payments |
|---|---|---|---|---|---|
| Bernard Kanton | $ 75,000 | 12/15/71 | $ 28,320.22 | 6/30/73 | $ 267.86 |
| Karl Neimand | 100,000 | 12/15/71 | 39,407.84 | 6/30/73 | - |
| Sidney Mishcon* | 100,000 | 12/15/71 | 39,407.67 | 6/30/73 | - |
| Matthew Stein | 20,000 | 12/15/71 | 8,501.22 | 6/30/73 | - |
| Edward Pallack | 30,000 | 12/15/71 | 11,822.30 | 6/30/73 | - |
| Melvin Hirschberg | 20,000 | 12/15/71 | 7,878.52 | 6/30/73 | - |
| | $345,000 | | $135,337.77 | | |

* Includes the interests of Ethel Reibstein, Lester Mishcon, Benjamin Jagendorf and Ralph Maxon, as assignees. All amounts payable to such assignees shall be paid to Sidney Mishcon.

102 Property

| Participants | (a) Initial Cash Contribution | (b) Date from which Interest Commences on (a) | (c) Carrying Charges Paid Through 12/31/74 | (d) Date from which Interest Commences on (c) | (e) Qualifying Payments |
|---|---|---|---|---|---|
| Abe Goldfarb | $ 25,000 | 2/1/72 | $ 6,853.29 | 10/31/73 | $3,618.24 |
| Edward A. Pallack | 36,000 | 2/1/72 | 12,841.25 | 10/31/73 | 2,605.14 |
| Catherine M. Vanderwaag | 15,000 | 2/1/72 | 6,446.04 | 10/31/73 | - |
| Dolores T. Virdone | 25,000 | 2/1/72 | 9,824.50 | 10/31/73 | 904.56 |
| Seymour Meyer | 10,000 | 2/1/72 | 4,291.63 | 10/31/73 | - |
| Melvin Hirschberg | 24,000 | 2/1/72 | 9,434.95 | 10/31/73 | 868.38 |
| Karl Neimand | 25,000 | 2/1/72 | 10,729.06 | 10/31/73 | - |
| | $160,000 | | $60,420.72 | | |

158 Property

| Participants | (a) Initial Cash Contribution | (b) Date from which Interest Commences on (a) | (c) Carrying Charges Paid Through 12/31/74 | (d) Date from which Interest Commences on (c) | (e) Qualifying Payments |
|---|---|---|---|---|---|
| Harris Groten | 20,000 | 6/01/72 | 12,075.12 | 11/01/73 | - |
| George Cooper | 20,000 | 6/01/72 | 12,075.12 | 11/01/73 | - |
| Arthur Ingram | 25,000 | 6/01/72 | 15,094.07 | 11/01/73 | - |
| Seymour Meyer | 10,000 | 6/01/72 | 6,037.55 | 11/01/73 | - |
| Karl Neimand | 10,000 | 6/01/72 | 6,037.55 | 11/01/73 | - |
| Harris Turkel | 7,200 | 6/01/72 | 4,347.02 | 11/01/73 | - |
| | $92,200 | | $55,666.43 | | |

## 196 Property

| Participants | (a) Initial Cash Contribution | (b) Date from which Interest Commences on (a) | (c) Carrying Charges Paid Through 12/31/74 | (d) Date from which Interest Commences on (c) | (e) Qualifying Payments |
|---|---|---|---|---|---|
| Karl Neimand | $ 45,000 | 2/1/73 | $ 17,081.60 | 3/31/74 | - |
| Seymour Meyer | 15,000 | 2/1/73 | 5,695.31 | 3/31/74 | - |
| Eugene Cohn* | 20,000 | 2/1/73 | 7,590.84 | 3/31/74 | - |
| Arthur Ingram | 12,500 | 2/1/73 | 4,747.55 | 3/31/74 | - |
| | $ 92,500 | | $ 35,115.30 | | |

* Includes the interests of Mae Cohn and Margaret Cohn, as assignees. All amounts payable to such assignees shall be paid to Eugene Cohn.

## 23[illegible] Property

| Participants | (a) Initial Cash Contribution | (b) Date from which Interest Commences on (a) | (c) Carrying Charges Paid Through 12/31/74 | (d) Date from which Interest Commences on (c) | (e) Qualifying Payments |
|---|---|---|---|---|---|
| George Cooper | $ 15,000 | 10/1/72 | $ 6,588.64 | 1/31/74 | - |
| Bernard Margulies* | 25,000 | 10/1/72 | 10,951.06 | 1/31/74 | - |
| Dorothy Levess | 25,000 | 10/1/72 | 10,951.06 | 1/31/74 | - |
| Karl Neimand | 25,000 | 10/1/72 | 10,951.06 | 1/31/74 | - |
| Richard Ehrman | 7,000 | 10/1/72 | 3,066.27 | 1/31/74 | - |
| William Ehrman | 7,000 | 10/1/72 | 3,066.27 | 1/31/74 | - |
| Sandy Ehrman | 6,000 | 10/1/72 | 2,628.36 | 1/31/74 | - |
| | $110,000 | | $48,202.72 | | |

* Includes the interest of Adele Margulies, as assignee. All amounts payable to such assignee shall be paid to Bernard Margulies.

250 Property

| Participants | (a) Initial Cash Contribution | (b) Date from which Interest Commences on (a) | (c) Carrying Charges Paid Through 12/31/74 | (d) Date from which Interest Commences on (c) | (e) Qualifying Payments |
|---|---|---|---|---|---|
| Karl Neimand | $ 60,000 | 1/01/73 | $ 24,618.47 | 1/15/74 | - |
| George Cooper | 15,000 | 1/01/73 | 6,157.72 | 1/15/74 | - |
| Edward Pallack | 15,000 | 1/01/73 | 5,471.08 | 1/15/74 | - |
| Arthur Ingram | 12,500 | 1/01/73 | 5,131.49 | 1/15/74 | - |
| Eugene Cohn* | 25,000 | 1/01/73 | 10,250.43 | 1/15/74 | - |
| | 127,500 | | 51,629.19 | | |

* Includes the interests of Mae Cohn and Margaret Cohn, as assignees. All amounts payable to such assignees shall be paid to Eugene Cohn.

PURCHASE AGREEMENT

**SCHEDULE D**

**Forms of notice of election to become Additional Seller and assignment of joint venture interests have been agreed upon by the attorneys for the various parties.**

PURCHASE AGREEMENT

## Schedule E

**Amounts paid by Rodin on account of 1975 Carrying Charges on the Properties**

| Property | Paid by | Amount |
|---|---|---|
| 102 | Rodin | $ 4,500.00 |
| 196 | Rodin | 1,962.30 |
| 231 | Rodin | 1,776.86 |
| Lump sum not allocated to any single property | Rodin | 10,000.00 |
| Total | | $ 18,239.16 |

PURCHASE AGREEMENT

Schedule F

| Property | Initial Invested Capital* | Percentage of Front Money Contributions In First Instance |
|---|---|---|
| 109 | $ 312,500 | 21.75% |
| 150 | 197,000 | 13.71 |
| 220 | 345,000 | 24.01 |
| 102 | 160,000 | 11.14 |
| 158 | 92,200 | 6.42 |
| 196 | 92,500 | 6.44 |
| 231 | 110,000 | 7.66 |
| 250 | 127,500 | 8.87 |
| Aggregate Initial Invested Capital | $1,436,700 | 100.00% |

* The Initial Invested Capital with respect to each joint venture, as shown in this column, is the same as the aggregate initial cash contributions to such joint venture, as shown at the foot of column (a) of Schedule C.

PURCHASE AGREEMENT

Schedule G

| Property | Description of Mortgage |
|---|---|
| 109 | Mortgage dated July 6, 1971, in the principal amount of $23,000, from Kenneth E. Boklan to Mendon Properties, Inc. |
| 150 | Mortgage dated June 19, 1971, in the principal amount of $396,660, from Eugene Rodin to Parkham Development Corp. |
| 220 | Mortgage dated January 28, 1972, in the principal amount of $187,100 from Eugene Rodin to Group Administrators Corp. |
| 102 | Mortgage dated May 16, 1972, in the principal amount of $54,900, from Bruce Rodin to Mendon Properties, Inc. |
| 158 | Mortgage dated August 17, 1972, in the principal amount of $54,200, from Godsberg Realty Corp. to Rillstone Properties, Inc. |
| 196 | Mortgage dated June, 1973, in the principal amount of $54,000, from Eugene Rodin to Mendon Properties, Inc. |
| 231 | Mortgage dated November 10, 1972, in the principal amount of $74,000, from Eugene Rodin to Rillstone Properties, Inc. |
| 250 | Mortgage dated February 9, 1973, in the principal amount of $46,250, from Bruce Rodin to Rillstone Properties, Inc. |

PURCHASE AGREEMENT

**Schedule H**

Form of discharge of mortgage has been agreed upon by the attorneys for the various parties.

PURCHASE AGREEMENT

**Schedule I**

Forms of termination statements under the Uniform Commercial Code have been agreed upon by the attorneys for the various parties.

PURCHASE AGREEMENT

## Schedule J

**Payments by Joint Venturers, other than Vogel, Rodin and Bruce, for Carrying Charges due in 1975**

| Participant | 1975 Contributions |
|---|---|
| **109 Property** | |
| Morris Belitz | 105.41 |
| Harris H. Groten | 84.39 |
| Gertrude H. Groten | 210.98 |
| Leonard Milton | 175.51 |
| Richard Moodnik | 84.41 |
| **150 Property** | |
| | -0- |
| **220 Property** | |
| Matthew Stein | 1,478.25 |
| **102 Property** | |
| Catherine M. Vanderwaag | 584.77 |
| Dolores T. Virdone | 974.60 |
| Seymour Meyer | 389.84 |
| **158 Property** | |
| Harris Groten | 2,019.67 |
| Seymour Meyer | 1,009.83 |
| Harris Turkel | 727.08 |
| **196 Property** | |
| Karl Neimand | 1,776.15 |
| Seymour Meyer | 1,368.55 |
| Eugene Cohn | 1,824.03 |
| **231 Property** | |
| Bernard Margulies | 1,777.86 |
| **250 Property** | |
| Eugene Cohn | 1,527.70 |

PURCHASE AGREEMENT

Schedule K

Form of assignment of joint venture interests has been agreed upon by the attorneys for the various parties.

PURCHASE AGREEMENT

**SCHEDULE L**

**Carrying Charges for 1974 advanced by Rodin and Vogel and not reimbursed to them**

| Property | Date of letter requesting payment | Advanced for | Amount advanced |
|---|---|---|---|
| 109 | 5/14/74 | Bernard Kanton | $ 560.38 |
| | 5/14/74 | Bernard Kanton | 379.86 |
| | 8/8/74 | Bernard Kanton | 551.04 |
| | 8/8/74 | Sydney Jarkow | 183.68 |
| | 8/8/74 | Morris Gudwin | 110.21 |
| | 8/8/74 | Arthur Ingram | 183.68 |
| | 8/8/74 | Leonard Milton | 183.68 |
| | 5/14/74 | Bernard Kanton | 188.49 |
| | 8/8/74 | Bernard Kanton | 188.49 |
| | 8/8/74 | Sydney Jarkow | 62.83 |
| | 8/8/74 | Morris Gudwin | 37.70 |
| | 8/8/74 | Arthur Ingram | 62.83 |
| | 8/8/74 | Leonard Milton | 62.83 |
| | 8/8/74 | Morris Gudwin | 60.81 |
| | 5/14/74 | Bernard Kanton | 191.27 |
| | 5/14/74 | Bernard Kanton | 371.05 |
| | 9/24/74 | Bernard Kanton | 106.42 |
| | 9/24/74 | Sydney Jarkow | 35.47 |
| | 9/24/74 | Morris Gudwin | 21.28 |
| | 9/24/74 | Arthur Ingram | 35.47 |
| | 9/24/74 | Leonard Milton | 35.47 |
| | 7/12/74 | Sydney Jarkow | 165.38 |
| | 7/12/74 | Morris Gudwin | 99.22 |
| 250 | 9/16/74 | Edward Pallack | 686.64 |
| 102 | 9/13/74 | Abe Goldfarb | 904.56 |
| | 9/13/74 | Edward A. Pallack | 1,302.57 |
| | 9/13/74 | Dolores T. Virdone | 904.56 |
| | 10/24/74 | Abe Goldfarb | 904.56 |
| | 10/24/74 | Edward A. Pallack | 1,302.57 |
| | 10/24/74 | Melvin Hirschberg | 868.36 |
| Total | | | $10,751.36 |
| | | Less AWT Payments | 7,938.70 |
| | | | $ 2,812.66 |

PURCHASE AGREEMENT

**Schedule M**

Forms of UCC-1 have been agreed upon by the attorneys for the various parties.

PURCHASE AGREEMENT

Schedule N

Record owners and outstanding mortgages on the Properties and the California collateral

South Jersey Properties

109 acre Property

Record owner - Eugene Rodin

Outstanding mortgages

Mortgage dated March 19, 1970, in the principal amount of $75,000, from Tamerlane Properties, Inc. to Frank Penater and Margaret Penater

Mortgage dated June 9, 1970, in the principal amount of $49,700, from Samuel Grimes to Charles Hodges and Flora Hodges

Mortgage dated June 22, 1970, in the principal amount of $75,000, from Kenneth Boklan to Florence Getzov

Mortgage dated November 24, 1970, in the principal amount of $53,920, from Hy Pogash and Burton Bronsther to Alfred Meyers

Mortgage dated November 25, 1970, in the principal amount of $155,340, from Hy Pogash and Burton Bronsther to Kenneth Boklan

Mortgage dated November 254, 1970, in the principal amount of $107,085, from Hy Pogash and Burton Bronsther to Tamerlane Properties, Inc.

Mortgage dated November 25, 1970, in the principal amount of $104,600, from Hy Pogash and Burton Bronsther to Alfred Meyers

Mortgage dated November 25, 1970, in the principal amount of $53,080, from Hy Pogash and Burton Bronsther to Samuel Grimes

PURCHASE AGREEMENT

Schedule N (continued)

109 acre Property (continued)

Mortgage dated July 6, 1971, in the principal amount of $28,000, from Kenneth Boklan to Hy Pogash and Burton Bronsther

Mortgage dated July 6, 1971, in the principal amount of $23,000, from Kenneth Boklan to Mendon Properties, Inc.

150 acre Property

Record owner - Eugene Rodin

Outstanding mortgages

Mortgage dated June 29, 1971, in the principal amount of $15,181, from Eugene Rodin to Joseph Maressa

Mortgage dated June 29, 1971, in the principal amount of $8,036, from Eugene Rodin to Shirbet Co., Inc.

Mortgage dated June 29, 1971, in the principal amount of $96,531, from Eugene Rodin to Shirbet Co., Inc.

Mortgage dated June 29, 1971, in the principal amount of $97,225, from Eugene Rodin to Joseph Maressa

Mortgage dated June 29, 1971, in the principal amount of $22,779, from Eugene Rodin to Joseph Maressa

Mortgage dated June 29, 1971, in the principal amount of $119,454, from Eugene Rodin to Shirbet Co., Inc.

...continued...

PURCHASE AGREEMENT

Schedule F (continued)

150 acre Property (continued)

Mortgage dated June 29, 1971, in the principal amount of $84,074, from Eugene Rodin to Joseph Maressa

Mortgage dated June 19, 1971, in the principal amount of $4,487, from Eugene Rodin to Joseph Maressa

Mortgage dated June 29, 1971, in the principal amount of $52,917, from Eugene Rodin to Joseph Maressa

Mortgage dated June 29, 1971, in the principal amount of $3,656, from Eugene Rodin to Joseph Maressa

Mortgage dated June 29, 1971, in the principal amount of $396,660, from Eugene Rodin to Parkham Development Corp.

220 acre Property

Record owner - Eugene Rodin

Outstanding mortgages

Mortgage dated January 28, 1972, in the principal amount of $77,625, from Kenneth Boklan to John Rigolizzo and Helen Rigolizzo

Mortgage dated January 28, 1972, in the principal amount of $40,860, from Kenneth Boklan to Anthony Cappuccio and Marie Cappuccio

Mortgage dated January 28, 1972, in the principal amount of $606,340, from Kenneth Boklan to John Rigolizzo, Mildred Rigolizzo, John Rigolizzo, Jr. and Helen Rigolizzo

...continued....

PURCHASE AGREEMENT

Schedule N (continued)

220 acre Property (continued)

Mortgage dated January 28, 1972, in the principal amount of $77,590, from Kenneth Boklan and John Rigolizzo, Jr. and Helen Rigolizzo

Mortgage dated January 28, 1972, in the principal amount of $187,100, from Kenneth Boklan to Group Administrators Corp.

...continued...

PURCHASE AGREEMENT

Schedule N (continued)

North Jersey Properties

102 acre Property

Record owner - Bruce Rodin

Outstanding mortgages

Mortgage dated May 16, 1972, in the principal amount of $382,500, from Bruce Rodin to Otto Manley, Marguerite Manley, Edward Manley, Rosemarie Manley, John Manley and Susanne Manley

Mortgage dated May 16, 1972, in the principal amount of $54,900, from Bruce Rodin to Mendon Properties, Inc.

158 acre Property

Record owner - Godsberg Realty Corp.

Outstanding mortgages

Mortgage dated July 30, 1968, in the principal amount of $55,000, from Godsberg Realty Corp. to Federal Land Bank of Springfield

Mortgage dated August 17, 1972, in the principal amount of $315,000, from Godsberg Realty Corp. to Santo Puzzutti, Gertrude Puzzutti, John Lucci and Jane Lucci

Mortgage dated August 17, 1972, in the principal amount of $54,200, from Godsberg Realty Corp. to Rillstone Properties, Inc.

...continued...

PURCHASE AGREEMENT

**Schedule N (continued)**

## 196 acre Property

Record owner - Eugene Rodin

Outstanding mortgages

Mortgage dated July 30, 1973, in the principal amount of $240,000, from Eugene Rodin to Millmaster Onyx Corporation

Mortgage recorded July 30, 1973, in the principal amount of $54,000, from Eugene Rodin to Mendon Properties, Inc.

## 231 acre Property

Record owner - Eugene Rodin

Outstanding mortgages

Mortgage dated April 21, 1969, in the principal amount of $170,000, from Adolf Robison and Ann Robison to Erwin Bender and Helen Bender

Mortgage dated November 10, 1972, in the principal amount of $134,000, from Eugene Rodin to Adolf Robison and Ann Robison

Mortgage dated November 10, 1972, in the principal amount of $74,000, from Eugene Rodin to Rillstone Properties, Inc.

## 250 acre Property

Record owner - Bruce Rodin

Outstanding mortgages

Mortgage dated February 9, 1973, in the principal amount of $385,000, from Bruce Rodin to Albert Lefeber and Elsie Lefeber

...continued...

PURCHASE AGREEMENT

Schedule N (continued)

250 acre Property (continued)

Mortgage dated February 9, 1973, in the principal amount of $46,250, from Bruce Rodin to Rillstone Properties, Inc.

California Collateral

Record owner - Eugene Rodin

Outstanding mortgage

Deed of trust with rent assignment dated July 24, 1973 from Eugene Rodin to Anita Estates, Inc.

PURCHASE AGREEMENT

**Schedule N (Continued)**

**Liens and Encumbrances Shown in Either Continuation Searches or Title Insurance Policies**

**Issued by Chicago Title Insurance Company:**

| | |
|---|---|
| 150 Property | Continuation Search #55619 dated 5/8/75; Title Insurance Policy #85992 dated 7/15/72 |
| 220 Property | Continuation Search #55618 dated 4/18/75; Title Insurance Policy #SJ-834191315 dated 2/8/72 |
| 109 Property | Continuation Search #55620 dated 4/17/75; Title Insurance Policy #87283 dated 8/13/71 |
| 231 Property | Continuation Search #72-H-03275 dated 4/20/75; Title Insurance Policy #72-H-03275 dated 11/13/72 |
| 158 Property | Continuation Search #72-E-10046 dated 4/20/75; Title Insurance Policy #72-E-10046 dated 8/22/72 |
| 250 Property | Continuation Search #72-H-04036 dated 4/20/75; Title Insurance Policy #72-H-04036 dated 5/15/73 |
| 196 Property | Continuation Search #72-H-03670 dated 4/20/75; Title Insurance Policy #72-H-03670 dated 8/14/73 |
| 102 Property | Continuation Search #72-H-00484 dated 6/8/72; Title Insurance Policy #72-H-00484 dated 6/8/72 |

**Issued by First American Title Insurance Company:**

| | |
|---|---|
| California collateral | Continuation Search #RIV-1495448-H dated 6/12/75; Title Insurance Policy #RIV-1470070 dated 8/10/73 |

PURCHASE AGREEMENT

**Schedule O**

**Unpaid Carrying Charges on the Properties that are, or will be, due through July 10, 1975**

| Property | Description of charge | Amount |
|---|---|---|
| 109 | Interest and amortization due June 9, 1975 on mortgage dated June 9, 1970, in the principal amount of $49,700 (the Hodges mortgage) | $ 2,578.04 |
| | Interest due June 19, 1975 on mortgage dated March 19, 1970, in the principal amount of $75,000 (the Penatar mortgage) | 1,500.00 |
| | Interest and amortization due June 22, 1975 on mortgage dated June 22, 1970, in the principal amount of $75,000 (the Getzov mortgage) | 8,943.75 |
| | Interest due August 25 and November 25, 1974 and February 25 and May 25, 1975, on mortgage dated November 25, 1970, in the principal amount of $107,085 | 1,873.99[1] |
| | Interest due November 25, 1974, and February 25 and May 25, 1975, on mortgage dated November 25, 1970, in the principal amount of $155,340 | 2,718.45[1] |

[1] Each unpaid payment

PURCHASE AGREEMENT

Schedule O (continued)

| Property | Description of charge | Amount |
|---|---|---|
| 109 (continued) | Interest due November 25, 1974 and February 25 and May 25, 1975, on mortgage dated November 25, 1970, in the principal amount of $53,080 | $ 928.90[1] |
| | Interest due August 25 and November 25, 1974 and February 25 and May 25, 1975, on mortgage dated November 24, 1970, in the principal amount of $53,920 | 943.60[1] |
| | Interest due August 25 and November 25, 1974 and February 25 and May 25, 1975 and principal due November 25, 1974 on mortgage dated November 25, 1970 in the principal amount of $104,600 | 1,830.50[2]<br>10,460.00[3]<br>1,647.45[4] |
| | Interest due July 6, 1975 on mortgage dated November 25, 1970 in the principal amount of $28,000 | 525.00 |

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[1]Each payment

[2]Interest due August 25 and November 25, 1974

[3]Amortization due November 25, 1974

[4]Interest due February 25 and May 25, 1975

PURCHASE AGREEMENT

**Schedule O (continued)**

| Property | Description of charge | Amount |
|---|---|---|
| 150 | Interest due June 29, 1975 on mortgage dated June 29, 1971, in the principal amount of $15,181 | $ 531.34 |
| | Interest due June 29, 1975 on mortgage dated June 29, 1971, in the principal amount of $8,036 | 281.26 |
| | Interest due June 29, 1975 on mortgage dated June 29, 1971, in the principal amount of $96,531 | 3,378.59 |
| | Interest due June 29, 1975 on mortgage dated June 29, 1971, in the principal amount of $97,225 | 3,402.88 |
| | Interest due June 29, 1975 on mortgage dated June 29, 1971, in the principal amount of $22,779 | 797.27 |
| | Interest due June 29, 1975 on mortgage dated June 29, 1971, in the principal amount of $119,454 | 4,180.89 |
| | Interest due June 29, 1975 on mortgage dated June 29, 1971, in the principal amount of $84,074 | 2,942.59 |
| | Interest due June 29, 1975 on mortgage dated June 29, 1971, in the principal amount of $4,487 | 157.05 |
| | Interest due June 29, 1975 on mortgage dated June 29, 1971, in the principal amount of $52,917 | 1,852.10 |

PURCHASE AGREEMENT

Schedule O (continued)

| Property | Description of charge | Amount |
|---|---|---|
| 150 (continued) | Interest due June 29, 1975 on mortgage dated June 29, 1971, in the principal amount of $3,656 | 127.96 |
| 220 | Interest due January 28, 1975 on mortgage dated January 28, 1972, in the principal amount of $77,625 | 2,716.87 |
| | Interest due January 28, 1975 on mortgage dated January 28, 1972, in the principal amount of $606,340 | 21,221.90 |
| | Interest due January 28, 1975 on mortgage dated January 28, 1972 in the principal amount of $77,590 | 2,715.65 |
| | Interest due January 28, 1975 on mortgage dated January 28, 1972, in the principal amount of $40,860 | 1,430.10 |
| 250 | Interest due June 1, 1975 on mortgage dated February 9, 1973, in the principal amount of $385,000 (the Lefeber mortgage) | 6,978.13 |

PURCHASE AGREEMENT

Schedule O (continued)

| Property | Description of charge | Amount |
|---|---|---|
| All Properties | In addition to the above, real estate taxes have not been paid on any of the Properties with respect to any part of 1975, nor have such taxes been paid upon the 150 Property for the last half of 1974. Moreover, no mortgage payments have been made since the first part of 1974 on any of the mortgages shown on Schedule G. | |

PURCHASE AGREEMENT

**SCHEDULE P**

**Miscellaneous Agreements, Etc.**

1. Two agreements dated November 12, 1973 with AWT Systems, Inc. relating to the three South Jersey Properties and an agreement dated November 12, 1973 regarding the North Jersey Properties.

2. Insurance policies affecting the various Properties.

3. Agreement dated January 28, 1972 between Kenneth E. Boklan and John Rigolizzo, Jr. and Helen Rigolizzo referred to in subparagraph (p) of subsection 8.1.

4. A wrongful death action instituted with respect to the 220 Property.

5. Title insurance policy #99304, issued by the Lawyers Title Insurance Corporation on October 15, 1969, and Memorandum of Conditional Sale of Real Estate dated October 10, 1969 and Grant of Perpetual Easement dated October 17, 1972, all re: the Indianapolis collateral.

STIPULATION DISCONTINUING AND DISMISSING ACTION AGAINST DEFENDANTS WILLIAM N. BIRNBAUM, ARTHUR VOGEL, SAMUEL GRIMES AND SYLVIA RODIN.

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF NEW YORK**

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
OCT 8 1975
TIME A.M.
P.M.

KARL M. NEIMAND, SYDNEY JARKOW, ARTHUR A. INGRAM, SIDNEY MISHCON, MORRIS GUDWIN, and EDWARD A. PALLACK,

Plaintiffs,

-and-

GEORGE COOPER, LEONARD MILTON, DOROTHY LEVESS, BERNARD S. KANTON, VAN BAALEN HEILBRUN & CO., INC., EMPLOYEES PROFIT SHARING PLAN AND TRUST, MORTIMER EHRMAN, WILLIAM EHRMAN, SAMUEL EHRMAN, RICHARD EHRMAN, JACK ORLOFF, ALEXANDER DAVIS, DAVID HERSHBERG, and MELVIN HIRSCHBERG,

Plaintiff-Intervenors,

-against-

MENDON PROPERTIES, INC., PARKHAM DEVELOPMENT CORP., SEYMOUR VOGEL, KENNETH E. BOKLAN, EUGENE RODIN, BRUCE RODIN, WILLIAM N. BIRNBAUM, SY VOGEL ASSOCIATES, ~~KILLSTONE PROPERTIES, INC., GODSBERG~~ REALTY CORP., BYERLY PROPERTIES, INC., GROUP ADMINISTRATORS CORP., TAMERLANE PROPERTIES, INC., HARTWICK PROPERTIES, INC., COLE-HUNT DEVELOPMENT CORPORATION, BERVO ASSOCIATES, INC., ARTHUR VOGEL, SAMUEL L. GRIMES and SYLVIA RODIN,

Defendants.

74 Civ. 970 (EN)

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned as follows:

1. This action is hereby discontinued, and the Plaintiffs' Amended Complaint and Intervenors' Complaint dismissed with prejudice and without costs as against the Defen-

STIPULATION DISCONTINUING AND DISMISSING ACTION AGAINST DEFENDANTS WILLIAM N. BIRNBAUM, ARTHUR VOGEL, SAMUEL GRIMES AND SYLVIA RODIN

dants WILLIAM N. BIRNBAUM, ARTHUR VOGEL, SAMUEL L. GRIMES and SYLVIA RODIN.

2. The action as to the remaining Defendants is hereby severed, and shall be continued under the same index number with the following caption:

"UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - - - - - - -

KARL M. NEIMAND, SYDNEY JARKOW, ARTHUR A. INGRAM, SIDNEY MISHCON, MORRIS GUDIN, and EDWARD A. PALLACK,

Plaintiffs,

74 Civ. 970 (EW)

-and-

GEORGE COOPER, LEONARD MILTON, DOROTHY LEVESS, BERNARD S. KANTON, VAN BAALEN HEILBRUN & CO., INC., EMPLOYEES PROFIT SHARING PLAN AND TRUST, MORTIMER EHRMAN, WILLIAM EHRMAN, SAMUEL EHRMAN, RICHARD EHRMAN, JACK ORLOFF, ALEXANDER DAVIS, DAVID HERSHBERG and MELVIN HIRSCHBERG,

Plaintiff-Intervenors,

-against-

MENDON PROPERTIES, INC., PARKHAM DEVELOPMENT CORP., SEYMOUR VOGEL, KENNETH E. BOKLAN, EUGENE RODIN, BRUCE RODIN, SY VOGEL ASSOCIATES, RILLSTONE PROPERTIES, INC., GODSBERG REALTY CORP., BYERLY PROPERTIES, INC., GROUP ADMINISTRATORS CORP., TAMERLANE PROPERTIES, INC., HARTWICK PROPERTIES, INC., COLE-HUNT DEVELOPMENT CORPORATION, and BERVO ASSOCIATES, INC.,

Defendants.
- - - - - - - - - - - - - - - - - - - - - - - - -

STIPULATION DISCONTINUING AND DISMISSING ACTION AGAINST DEFENDANTS WILLIAM N. BIRNBAUM, ARTHUR VOGEL, SAMUEL GRIMES AND SYLVIA RODIN

3. This Stipulation is being executed and delivered pursuant to the provisions of a certain settlement as embodied in an instrument entitled "Purchase Agreement" dated the 17th day of July, 1975, by and among Karl M. Neimand, et al., and Sy Vogel Associates, et al.

Dated: October 6, 1975.

LIPPER, LOWEY & DANNENBERG

By _____
A Member of the Firm

_____
BERNARD S. KANTON

Attorneys for Plaintiffs and Plaintiff-Intervenors

NICKERSON, KRAMER, LOWENSTEIN, NESSEN, KAMIN & SOLL

By _____
A Member of the Firm

ROGERS & WELLS

By _____
A Member of the Firm

FINK, WEINBERGER, FREDMAN & CHARNEY

By _____
A Member of the Firm

STIPULATION DISCONTINUING AND DISMISSING ACTION AGAINST DEFENDANTS WILLIAM N. BIRNBAUM, ARTHUR VOGEL, SAMUEL GRIMES AND SYLVIA RODIN

MEYER, ENGLISH & CIANCIULLI, P.C.

By Bernard S. Meyer /BK
A Member of the Firm

Attorneys for Defendants

Dated: Brooklyn, New York
October 7, 1975

SO ORDERED:

Edward R. Neaher
U. S. D. J.

Dated:

STIPULATION AND ORDER THAT REMAINING DEFENDANTS HAVE NO FURTHER OBLIGATION TO ANSWER AMENDED COMPLAINT AND INTERVENORS' COMPLAINT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

KARL M. NEIMAND, et al.,

Plaintiffs,

- and -

GEORGE COOPER, et al.,

Plaintiffs-Intervenors,

- against -

MENDON PROPERTIES, INC., et al.,

Defendants.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
OCT 15 1975
TIME A.M.
P.M.

74 Civ. 970 (EN)

Stipulation

The parties having entered into a "Purchase Agreement," dated as of July 17, 1975, providing for the settlement and future discontinuance of this litigation and providing, also, for the continued pendency of this litigation until the terms of the Purchase Agreement have been carried into effect,

It is hereby stipulated by and among the attorneys for plaintiffs and the attorneys for those defendants against

STIPULATION AND ORDER THAT REMAINING DEFENDANTS HAVE NO FURTHER OBLIGATION TO ANSWER AMENDED COMPLAINT AND INTERVENORS' COMPLAINT

whom the action has not heretofore been discontinued (the "remaining defendants") as follows:

1. The remaining defendants shall have no further obligation to answer plaintiffs' amended complaint and intervenors' complaint.

2. The motions of certain of the remaining defendants, dated November 6, 1974, seeking dismissal of the complaint and disqualification of one of the attorneys for plaintiffs from acting as such are withdrawn.

3. Plaintiffs' request for admissions dated November 11, 1974 is withdrawn.

4. All outstanding notices of deposition are withdrawn.

5. Further proceedings, if any, in this litigation shall be conducted in accordance with the Purchase Agreement dated as of July 17, 1975.

STIPULATION AND ORDER THAT REMAINING DEFENDANTS HAVE NO FURTHER OBLIGATION TO ANSWER AMENDED COMPLAINT AND INTERVENORS' COMPLAINT

New York, New York
October 14, 1975

Lipper, Lowey & Dannenberg

By _____
A member of the firm

_____
Bernard S. Kanton

Attorneys for Plaintiffs and Plaintiffs-Intervenors

Nickerson, Kramer, Lowenstein, Nessen, Kamin & Soll

By _____
A member of the firm

Rogers & Wells

By _____
A member of the firm

Fink, Weinberger, Fredman & Charney

By _____
A member of the firm

Dated Brooklyn, New York
October 14, 1975
So ordered:

_____
U.S.D.J.

NOTICE OF MOTION FOR ORDER GRANTING LEAVE TO CATHERINE M. VANDERWAAG AND DOLORES T. VIRDONE TO INTERVENE AND BE NAMED AS ADDITIONAL PLAINTIFFS-INTERVENORS.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---

KARL M. NEIMAND, ET AL.,

Plaintiffs,

-and-

GEORGE COOPER, ET AL.,

Plaintiffs-Intervenors,

-against-

MENDON PROPERTIES, INC., ET AL.,

Defendants.

74 Civ. 970 (EN)

NOTICE OF MOTION

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PLEASE TAKE NOTICE, that upon the annexed affidavits of Catherine M. Vanderwaag, sworn to the 24th day of February, 1976, of Dolores T. Virdone, sworn to the 16th day of February, 1976, of Richard B. Dannenberg, sworn to the 24th day of February, 1976, and upon the "Pu e Agreement" dated as of July 17, 1975 providing for the settlement of this action (hereinafter referred to as the "Settlement Agreement"), and upon all the other proceedings had herein the undersigned will move this Court in Courtroom #2 at the United States District Court for the Eastern

NOTICE OF MOTION FOR ORDER GRANTING LEAVF TO CATHERINE M. VANDERWAAG AND DOLORES T. VIRDONE TO INTERVENE AND BE NAMED AS ADDITIONAL PLAINTIFFS-INTERVENORS

District of New York, 225 Cadman Plaza East, Borough of Brooklyn, City of New York on the 12th day of March, 1976 at 10:00 A.M. thereon or as soon as counsel can be heard:

1) granting leave to Catherine M. Vanderwaag and to Dolores T. Virdone to intervene and be named as additional plaintiffs-intervenors, and

2) for the entry of judgment pursuant to Section 18 of the Settlement Agreement as against defendants Eugene Rodin, Bruce Rodin and Mendon Properties, Inc. on behalf of Catherine M. Vanderwaag in the amount of $26,195.18, together with appropriate interest thereon from February 1, 1976, and on behalf of Dolores T. Virdone in the amount of $41,692.74, together with appropriate interest thereon from February 1, 1976 and both with reasonable taxable costs and for such other relief as the court deems just and proper.

Dated: New York, N. Y.
February 24, 1976

Yours, etc.,

LIPPER, LOWEY & DANNENBERG

By _____
Attorneys for the Plaintiffs
and Plaintiffs-Intervenors
and for Catherine M. Vanderwaag
and Dolores T. Virdone
747 Third Avenue
New York, New York 10017
(212) 759-1504

**NOTICE OF MOTION FOR ORDER GRANTING LEAVE TO CATHERINE M. VANDERWAAG AND DOLORES T. VIRDONE TO INTERVENE AND BE NAMED AS ADDITIONAL PLAINTIFFS-INTERVENORS**

TO: NICKERSON, KRAMER, LOWENSTEIN,
NESSEN, KAMIN & SOLL, ESQS.
Attorneys for Eugene Rodin
919 Third Avenue
New York, New York 10022

EUGENE RODIN
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Sands Point, New York

ROGERS & WELLS, ESQS.
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MENDON PROPERTIES, INC.
18 West Carver Street
Huntington, New York 11743

FINK, WEINBERGER, FREDMAN & CHARNEY, P.C.
Attorneys for defendant Bruce Rodin
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SEYMOUR VOGEL
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STATE OF NEW YORK, :
COUNTY OF DELAWARE, : SS:

I, William Finch , being duly sworn do depose and say: that I am over the age of twenty-one years and employed by The Reporter Company, Inc., Printers at Walton, New York.

That on the 17th day of September , 19 76 , at the request of Leon Malman, Esq., Attorney at Law, 45 North Station Plaza, Great Neck, New York,
I served one copy of an Appendix entitled "Karl M. Neimand vs Mendon Properties" on Dean & Falanga, Esqs., Attorneys at Law,

by depositing said 1 copy in postpaid wrapper at 4 p. m. on this day, in the United States Postoffice at Walton, New York, addressed to the above as follows:

Dean & Falanga, Esqs., Attorneys at Law, 1 Old Country Road, Carle Place, New York,

and that there is a regularly established mail route between Carle Place, New York, and Walton, New York.

William Finch

Sworn to before me
this 17th day of September , 1976.

Joan W. Clapperton
Notary Public

JOAN W. CLAPPERTON
NOTARY PUBLIC
DEL. CO., STATE OF NEW YORK
COMMISSION EXPIRES MAR. 30, 19 78

Services of three (3) copies of
the within JOINT APPENDICES
hereby admitted this 22 day
of SEPT , 1976

Attorney for Plaintiff